ATTACHMENT J:
GCI JULY 2019 REQUEST FOR REVIEW

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
GCI Communication Corp.	)	WC Docket No. 02-60
Request for Review of Decision of the Universal Service Administrator and	)	
Petition for Waivers	)	

REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR AND PETITION FOR WAIVER

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July 12, 2019

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SUMMARY

The Rural Health Care program is vital in Alaska, supporting high-bandwidth circuits for rural health care providers that are a literal lifeline to some of most remote communities in our country. This request for review concerns a policy USAC adopted in 2016 that has made it difficult if not impossible for these health care providers to upgrade circuits to higher bandwidths during the course of a funding year. USAC in 2013 attempted to block these types of upgrades and was reversed on appeal by the Wireline Competition Bureau in 2014.

USAC's new policy requires health care providers to provide firm installation dates for upgraded circuits, placing the financial risk of any installation delays – delays which are common if not inevitable in Alaska – on the health care providers. In the past, USAC had allowed health care providers to overlap the expected end date for their old services with the expected install date for the new services, thereby mitigating the risk of any delays. Under USAC's new policy, installation delays have caused health care providers to run out of money on the funding commitments for old services that had to be continued until the new services were available.

GCI identified this funding gap problem when USAC first implemented its new policy and attempted to work with USAC to avoid it or mitigate it. GCI and the affected health care providers then reasonably relied on USAC guidance that USAC could and would adjust the commitment amounts once the final service dates were known, thus avoiding any gaps in funding. GCI appealed USAC's eventual clarification that, notwithstanding adjustments in actual dates services were provided, funding commitment amounts were fixed and could not be increased. GCI timely filed its USAC appeal within 60-days of USAC's clarification however USAC found that GCI should have appealed the funding commitments themselves.

GCI requests review of USAC's policy of preventing overlapping funding commitment requests. USAC's policy inevitably leads to gaps in funding due to installation delays, discriminates against health care providers in Alaska where such delays are common, and is not in accordance with Commission rules that allow health care providers to upgrade circuits and to obtain multiple connections – including redundant connections – if needed for health care purposes. In practice, these connections are consecutive, so there is typically no duplicative disbursements, only overlapping commitments which are necessary to ensure uninterrupted funding. (With a rollover mechanism now in place, any unused committed funds can be made available in future funding years.)

To the extent waivers of the 60-day appeal deadline or to change the amount of funding commitments after-the-fact are necessary, GCI shows that there are unique and special circumstances that warrant waivers: GCI's reasonable reliance on incorrect or incomplete guidance from USAC; the conditions in Alaska itself which regularly lead to installation delays; and the events of the 2016 funding year itself with the program cap being hit for the first time. GCI also shows how USAC's policy that imposes unnecessary financial risk and causes serious financial impacts on health care providers – with respect to funding they are otherwise eligible for and desperately need – is not in the public interest.

The Commission should direct USAC to adjust the 2016 funding commitments covered in this appeal to reflect the actual service dates for eligible services provided. Notably, the Commission can provide this relief by reallocating money from 2016 funding commitments awarded to these same health care providers for the new services that saw installation delays.

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REQUEST FOR REVIEW OF DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR
AND
PETITION FOR WAIVER

GCI Communication Corp. ("GCI"), by its counsel and pursuant to 47 C.F.R. Sections 54.719(b) and (c), hereby seeks a review and reversal of the Notice of Dismissal to Ms. Ariel Burr, General Communication, Inc., issued by the USAC Rural Health Care Division on May 13, 2019.[1] USAC's actions were contrary to Commission rules and policies and to the public interest. In connection with this Request for Review, GCI also seeks waivers of Sections 54.719(a), 54.720(b) and 54.675 of the Commission's rules ("Rules"), and such other Rules as may be necessary to grant relief.[2] Grant of such waivers is necessary and justified in this case to ensure

[1] *See* Exhibit 1, hereto (hereinafter *USAC GCI Appeal Decision*).

[2] *See* 47 C.F.R. §§ 54.719(a) (permitting requests for review of "an action taken by the Administrator") and 54.720(b) (permitting requests for review of "an Administrator decision"), and 54.675 (establishing programmatic funding caps on a funding year basis); *see also See Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration, CC Docket No. 96-45, 13 FCC Rcd 5318, 5426, ¶ 229 (1997) (hereinafter, *Fourth Order on Reconsideration*) ("A commitment of funds pursuant to an initial FCC Form 471 or Form 466 does not ensure that additional funds will be available to support the modified services.").

uninterrupted rural health care support to health care providers in very remote areas of Alaska. The Commission's review of USAC's decision in this matter is subject to a *de novo* standard of review in accordance with Section 54.723 of the Rules. In support thereof, the following is shown.

I. STATEMENT OF INTEREST

The Commission's Rural Health Care ("RHC") Telecommunications program supports the provision of discounted telecommunications services to eligible rural health care providers ("HCPs").[3] GCI is an eligible service provider in the RHC program, providing vital telecommunications to very remote HCPs across the state of Alaska. Many Alaska HCPs are hundreds of miles from the nearest highway, and accessible only by airplane, boat, or snow machine. As a result, HCPs obtain access to routine and emergency health care primarily via telecommunications links back to Anchorage which are supported through the RHC program.[4]

HCPs in remote areas of Alaska are typically challenged economically, relying on federal aid to support the provision of even basic health care. As this Commission has recognized, because of Alaska's size and remoteness, telecommunications links used for health care are much more costly than in most areas of the country.[5] The combination of economic challenges and more

[3] References throughout to the "RHC program" refer to the RHC Telecommunications program unless otherwise indicated.

[4] As GCI has previously informed the Commission, Alaska is geographically and demographically unique—over four times the size of California, yet with an estimated population of only 737,080—and therefore presents unparalleled challenges to the delivery and provision of quality healthcare. Approximately 117 villages have fewer than 100 residents. For many of Alaska's residents, telemedicine is the only way to receive healthcare, and it is a mainstay of the state's healthcare providers. Alaska leads the way in developing innovative healthcare platforms and networks to reach rural residents, including a network of over 550 Community Health Aides/Practitioners serving more than 170 remote villages. These providers use telemedicine to conduct triage; to determine when a patient can be treated locally rather than being flown to Anchorage; to enable the exchange of documents and images; to conduct patient education; and to provide doctor-led consultation and treatment, including psychiatry.

[5] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 32 FCC Rcd 5463, 5464, ¶ 4 (2017) (hereinafter, *Alaska Waiver Order*) ("Alaska's large size, varied terrain, harsh climate, isolated populations, and lack of infrastructure are well-known challenges. In remote parts of the state, in particular, these challenges can translate into high costs of service, including high healthcare-related communications services") (footnote omitted).

costly connectivity means that loss of RHC program funding for even one month represents a profound financial hardship for remote Alaskan HCPs.[6]

II. STATEMENT OF FACTS

The events leading to this appeal and request for waivers date back to 2013 when USAC inexplicably began to deny funding requests for health care providers seeking bandwidth upgrades under existing evergreen contracts, without consideration of the relevant competitive bidding documentation or contracts. That year, GCI wrote to USAC and explained that USAC's position that such upgrades were *per se* violations of the competitive bidding rules was not supported by clear Commission precedent in the RHC program.[7] USAC's ultimate refusal to accommodate allowable service upgrades forced two Alaskan health care providers to file five separate FCC appeals challenging USAC funding year ("FY") 2013 funding denials. In 2014, the Wireline Competition Bureau granted those appeals, reversing USAC's actions without comment but citing as the basis for reversal the cases GCI identified in its initial letter to USAC.[8]

Two years later, in 2016, USAC through the procedures at issue in this request for review and waiver is again thwarting critical bandwidth upgrades for very remote rural HCPs in Alaska. Prior to 2016, if an applicant expected to upgrade services during the course of the RHC program funding year (July 1 through June 30) – either under an existing evergreen contract or under a new contract that took effect during the funding year – the applicant would submit two Form 466s (request for services), one with the expected start/end service dates for the existing (*i.e.*, the "old")

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[6] *See id.* at 5465, ¶ 8 (recognizing economic impact of RHC funding losses to Alaskan HCPs generally)

[7] *See* Letter from Jeffrey Mitchell, Counsel for GCI, to Craig Davis, Vice-President, Rural Health Care Division (October 18, 2013), Exhibit 2, hereto.

[8] *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, 29 FCC Rcd 12721, 12726-27 (2014) (link) (hereinafter, *2014 Bureau Appeal Decision*).

service, and one with the expected start/end dates for the new service. These prospective start/end dates had to be best-guesses because they were dependent on a variety of factors including the extreme weather conditions that are common in Alaska and that impact installation timing.[9] As a result, the funding requests for the old and new services could reflect service start/end dates that overlapped.

For example, a 10 Mbps funding request might run from July through February (8 months), while an expected upgrade to 20 Mbps service might run from January through June (6 months) at the same location. Although funding for December and January (in this example) would be covered by two separate funding commitment letters ("FCLs"), one for each of the connections, there would be no double-funding because only one of the two circuits would be active in any given month. Notably, RHC program rules do not limit the number of connections an HCP can obtain – allowing, for example, two physically diverse connections if needed to ensure uninterrupted remote access to life-saving emergency care.[10] Thus, there was and is no basis to prohibit or deny funding requests for multiple circuits to the same HCP with start/end dates that overlap.

Nonetheless, for funding year 2016 USAC began to prevent HCPs from requesting funding for circuits with overlapping time periods. Because funding requests are typically capped once

[9] *See, e.g., Letter to Ms. Cindy Hall, The Alaska Wireless Network, LLC,* 32 FCC Rcd 4728, 4730 (WTB, 2017) (granting waiver of construction deadline "in view of the unique challenges of serving Alaska—including … its daunting climate and geography, and widely dispersed population….) (hereinafter, *AWN Order*); *cf. Alaska Waiver Order*, 32 FCC Rcd at 5464, ¶ 4 ("Alaska's large size, varied terrain, harsh climate, isolated populations, and lack of infrastructure are well-known challenges.") (citation omitted).

[10] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16844, Appendix B at ¶ 30 (2012) (hereinafter, *HCF Order*) (recognizing that "[i]ncreased rates of EHR adoption and exchange also will increase demand for secure, redundant connections, especially when HCPs adopt cloud-based solutions") (footnote omitted); *see also id.* at 16731, ¶ 113, n.295 ("HCPs might seek to incorporate redundant, secondary or fail-over services (to be used in case of an outage) into their networks. *Such services are eligible for support* . . . .) (emphasis added); *see also* 47 C.F.R. 54.602(d) (to be eligible services must be "reasonably related to the provision of health care").

they are issued, counsel for GCI approached USAC to explain that installation dates for new services were inherently uncertain in Alaska and that funding gaps would be caused by USAC's new process for requiring start/end dates to be fixed in advance. As counsel explained: "[GCI does not] want to put a customer in a position where GCI provides an 'end date' for the old service and the customer gets cut off from funding when the new service is delayed by a month or more."[11]

In response, USAC staff provided the following guidance (in key part):

> Practically speaking, as long as the HCP does not submit the Form 467 [confirming receipt of services[12]] service start and end dates could be modified on an FCL (in most cases). To that end, if an HCP plans to upgrade service in January, and there is an FCL for the original service for July through Dec, and one FCL for the upgraded service for Jan – June, as long as the Form 467 hasn't been submitted for either of those FCLs, the dates for both FCLs could be adjusted to match the dates of the service change (in most cases).[13]

Over the course of FY 2016, USAC provided similar guidance to GCI and its customers.[14] At no point in any of these conversations did USAC suggest that any gaps in funding caused by its new policy could not be addressed through revision of the service dates through the Form 467. As a result, GCI and its customers understood the Form 467 process of fixing service dates after-the-

[11] *See* Exhibit 3, Attachment 2, attached hereto (hereinafter *GCI USAC Appeal*).

[12] According to the instructions for Form 467 (link): "Form 467 is used by a health care provider (HCP) to notify [USAC] that the service provider began providing the telecommunications or Internet services for which the HCP is seeking to receive the benefit of reduced rates through the rural health care universal service support mechanism. It is the last form required in the application process. This form is also used to notify RHCD when the HCP has discontinued the service (*i.e.*, service is turned off), or that service was not (or will not be) turned on during the funding year."

[13] *See GCI USAC Appeal*, Exhibit 3, Attachment 3 at 1 (emphasis added). To confirm USAC understood its guidance to be addressing GCI's concern for avoiding gaps in funding for HCPs, GCI-requested and participated in a follow-up call with USAC staff the next day. *See GCI USAC Appeal*, Exhibit 3, at 3 n.8.

[14] *See GCI USAC Appeal*, Exhibit 3, Attachment 4 at 1 (responding to question about whether the end-date for Bristol Bay Area Health Corporation FRN 1688624 would be adjusted, USAC staff stated: "Yes, it will be adjusted to 9/30/16 to correspond with the anticipated install date of 10/1/16 of the 30M service on FRN 1690396. *Once again the commitments are not finalized until the FCC Form 467 is received from the HCP and the [service support schedule] is produced*.") (emphasis added); *id.*, Attachment 5 at 1 ("FRNs 1689896, 1689903, and 1689900 – The funding start date for these FRNs will be adjusted to reflect the anticipated install dates you provided in your response. The corresponding forms for the existing service will have the funding end date adjusted to end prior to the start of these upgrade forms.").

fact would avoid funding gaps. Accordingly, when USAC finally issued 2016 funding commitments in April 2017, there was no apparent reason to appeal them.

Subsequently, and in accordance with USAC's guidance, affected applicants sought to adjust their service schedules (the monthly schedule of services eligible for RHC reimbursements) by modifying their Form 467s. USAC, however, denied or failed to act on these requests. Thus, in August 2017, GCI sought a conference call with USAC management. Then, during a call on September 21, 2017, USAC stated for the first time that HCPs could adjust their service dates but could not make corresponding upward adjustments to the funding amount for affected FCLs. GCI repeatedly requested that USAC memorialize this decision in writing, but USAC never did so. With no written decision from USAC forthcoming, on November 17, 2017, GCI appealed twenty-eight specific FY 2016 funding requests with funding gaps due to the delayed start of new services or, in three cases, USAC's refusal to process service date corrections. Eighteen months later, USAC issued a two-and-a-half page decision essentially dismissing GCI's appeal as untimely.[15]

In October 2017, GCI sent a letter to USAC formally requesting USAC conform its administrative processes to Commission requirements permitting otherwise appropriate service upgrades to occur during a funding year. Among other things, GCI explained: "GCI does not believe it is reasonable for [USAC] to expect applicants to forego needed service changes, or to proceed with those changes at-risk for installation delays. Accordingly, we renew our request for [USAC] to implement an administrative solution to this problem."[16] USAC has not responded to this letter and, as of FY 2019, has not altered its policy of prohibiting HCPs from providing flexible

[15] *See USAC GCI Appeal Decision,* Exhibit 1.

[16] Letter from Jeffrey Mitchell to Karen Lee, Vice-President of Rural Health Care Division, USAC, at 2 (October 25, 2017), attached as Exhibit 4, hereto.

service start/end dates, and has offered no alternatives for how HCPs can avoid gaps in funding when they upgrade services in the course of a funding year.

In light of the above, the questions for review in this case are whether USAC's refusal to administratively accommodate allowable mid-year service upgrades violates Commission rules and policies; and whether the resulting and foreseeable gaps in RHC funding for otherwise eligible services is contrary to Commission rules and policies, and is contrary to the public interest in supporting the uninterrupted delivery of health care in very remote areas of Alaska.

III. THE COMMISSION MUST AGAIN DIRECT USAC TO ACCOMODATE ALLOWABLE MID-YEAR SERVICE UPGRADES

The starting and ending dates for services that have not yet been installed in Alaska are inherently unknowable due to weather and climate conditions there. USAC's policy, implemented for the first time in funding year 2016, of prohibiting HCPs from providing flexible start/end dates for old and needed new services has no basis in existing rules and effectively prohibits mid-year service upgrades in Alaska.

The affected HCPs in almost every case followed USAC's new policy and provided estimated dates when old services would no longer be needed due to expected service upgrades. Due to installation delays for new services, the old services were needed for more months than originally expected. As a direct result, these HCPs have no RHC support for parts of the 2016 funding year, bringing uncertainty and, absent relief, financial hardship that will impact the delivery of health care. In many cases, affected HCPs have requested less money than USAC approved on funding commitments for the new services that were delayed, money that is stranded and not being used to potentially offset the gap in funding for the old service. The Commission must act and direct USAC to either restore the policy that existed before 2016 or provide an alternative mechanism to facilitate permissible bandwidth upgrades.

Long-standing Commission precedent allows HCPs to upgrade their services during the course of a funding year. Such upgrades are allowed under existing contracts when the service change does not represent a "cardinal change" to the underlying contract.[17] Cardinal change is a federal doctrine that considers whether a contract change is minor – *i.e.*, whether the change is "within the scope of the original contract."[18] "Ordinarily a modification falls within the scope of the original contract if potential offerors reasonably could have anticipated [the modification] under the changes clause of the contract."[19]

Bandwidth upgrades are not considered cardinal changes when the competitive bidding process contemplates bandwidth upgrades and the contract between the HCP and service provider provides for them. Notably, one of the cases cited by the Commission in 1997 when it implemented the cardinal change doctrine for the RHC and E-rate programs involved bandwidth upgrades.[20] In that case, the court held that a substantial increase in bandwidth (from T1 (1.5 Mbps) to T3 (45 Mbps)) did not represent a cardinal change within a large government contract.[21] The Wireline Competition Bureau in 2014, in upholding appeals by Alaskan HCPs who had

[17] *See Fourth Order on Reconsideration*, 13 FCC Rcd at 5425-26, ¶¶ 227-29 (and cases cited therein) (finding that minor contract modifications or modifications contemplated in the underlying contract are not cardinal changes and do not require additional competitive bidding); *HCF Order*, 27 FCC Rcd at 16791, ¶ 261 (reiterating Commission's conclusions in the Universal Service Fourth Order on Reconsideration concerning cardinal changes; also stating that contracts designated as evergreen contracts are exempt from the Commission's competitive bidding requirements for the life of the contract).

[18] *See Fourth Order on Reconsideration*, 13 FCC Rcd at 5425, ¶ 227.

[19] *Id.*; *see also id.* at ¶ 228 ("The cardinal change doctrine recognizes that a modification that exceeds the scope of the original contract harms disappointed bidders because it prevents those bidders from competing for what is essentially a new contract.").

[20] *Id.* at ¶ 227 (citing *AT&T Communications v. WilTel*, 1 F.3d 1201, 1205 (Fed. Cir. 1993)).

[21] *See AT&T v. WilTel*, 1 F.3d at 1204. The Court also concluded that the T3 circuits represented the same "service" as the T1 circuits – *i.e.*, they were both a dedicated transmission service. *Id.* at 1206-07.

bandwidth upgrades denied by USAC clearly agreed with this analysis, specifically citing these precedents.[22]

All of the bandwidth upgrades at issue in this appeal were pursuant to new competitively bid contracts or within the scope of existing competitively bid contracts. The only issue is that the service dates for old services and the new upgraded services could not be determined with certainty before the start of the funding year (at the time of the Form 466 submission). USAC's new policy forced these HCPs to incur one hundred percent of the financial risk for delays in the installation of the needed new services. This policy if left unchanged will cause HCPs to forgo needed mid-year services upgrades. Whether the upgrades occur pursuant to an existing contract or a new one, deterring them is against the letter and spirt of Commission rules allowing such upgrades.

USAC has claimed that overlapping service dates constitute "duplicate" funding that is "not allowed in any of the RHC programs."[23] This is incorrect for two reasons. First, there is no limit to the number of circuits an HCP may subscribe to under the RHC programs, provided those circuits are needed for the provision of health care.[24] Second, while old and new circuits may have overlapping in-service dates, the intention and usual outcome is to obtain consecutive (*i.e.*, uninterrupted) services.

To the extent USAC was attempting to minimize the size of funding commitments requested due to funding cap constraints, there is no basis in the rules to prevent HCPs from

[22] *See 2014 Bureau Appeal Decision*, note 8, *supra*.

[23] *See GCI USAC Appeal*, Exhibit 3, Attachment 3, at 1.

[24] *See* 47 C.F.R. § 54.602(d) ("Services for which eligible health care providers receive support from the Telecommunications Program . . . must be reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the state in which such health care services or instruction are provided."); *HCF Order*, 27 FCC Rcd at 16731, ¶ 113, n.295 ("HCPs might seek to incorporate redundant, secondary or fail-over services (to be used in case of an outage) into their networks. *Such services are eligible for support* . . . .) (emphasis added); *id.* at 16844, Appendix B at ¶ 30 (recognizing that "[i]ncreased rates of EHR adoption and exchange also will increase demand for secure, redundant connections, especially when HCPs adopt cloud-based solutions") (footnote omitted).

seeking the circuits they they need to ensure uninterrupted funding during the course of the funding year. Indeed, any unused RHC funding was, and will be, available for rollover in future funding years.[25]

Administrative processes that are not supported by Commission rules and that inevitably lead to gaps in funding for the most remote rural HCPs do not fulfill the most basic policy objectives for the RHC program. Indeed, USAC's actions have needlessly and arbitrarily deprived HCPs of RHC funding for eligible services. The loss of funding was needless because the funding gaps caused by USAC's actions were inevitable, foreseeable, were brought to USAC's attention in advance by GCI, and could have been addressed administratively – by USAC abandoning its new policy or at least partially mitigating the effects of the policy by (for example) allowing service substitutions. The loss of funding is arbitrary because the amount of lost funding is random and unpredictable, driven solely by the vagaries of how quickly GCI can install new services in light of weather and climate conditions in Alaska.

For the reasons set forth above, the Commission should grant this appeal and overturn USAC's current policy of preventing "overlapping" funding requests by HCPs that require upgraded services during the course of a funding year. Specifically, the Commission should direct USAC to adjust the service dates and amounts of the relevant FCLs to reflect the services actually provided.

[25] *See Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631, 10667-8, ¶ 109 (2017) (directing "that [previously] unused funds from prior years be carried forward to reduce the effect of proration for certain health care providers in FY 2017" and establishing a formal carry-forward process for unused funds in the future).

IV. WAIVERS WHERE NECESSARY ARE JUSTIFIED TO ENSURE UNINTERRUPTED RURAL HEALTH CARE SUPPORT TO HEALTH CARE PROVIDERS IN REMOTE AREAS OF ALASKA.

In connection with this Request for Review, to the extent necessary, GCI also seeks waivers of Sections 54.719(a), 54.720(b) and 54.675 of the Rules. Grant of such waivers is necessary and justified in this case to ensure uninterrupted rural health care support to health care providers in very remote areas of Alaska.

Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *Northeast Cellular,* 897 F.2d at 1166. Waiver of the Commission's rules is appropriate under *Northeast Cellular* if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular,* 897 F.2d at 1166. A similar waiver standard in Section 1.925 (b)(3)(ii) of the Commission's rules allows for grant of waiver requests when "in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative." The waiver requests sought herein meet both the *Northeast Cellular* and the Section 1.925 (b)(3)(ii) requirements.

A. If Required, Waivers of the Appeal Deadline and to Modify Funding Commitments are Warranted Due to the Special and Unique Circumstances Associated with USAC's Incorrect or Incomplete Guidance Combined with Alaska's Harsh Climate and the Events of the 2016 Funding Year.

GCI is a "party aggrieved by an action taken by the Administrator [USAC]" and as such has a right to seek review of that action.[26] A threshold question for the Commission is whether a statement from USAC during a conference call that USAC would not take an action it had previously implied it could and would take, constitutes an "action" of the Administrator. If the Commission agrees USAC's statement was an appealable action, then GCI's request for review of USAC's decision is timely filed. If the Commission instead concludes the appealable action in this case was USAC's issuance of funding commitments (or some other action such as USAC's implementation of the policy against "overlapping" funding requests in the first instance), then GCI respectfully requests waiver of the 60-day appeal deadline in light of the special and unique circumstances underlying failure to previously seek review.

First, GCI's failure to seek review previously was not due to an oversight. Rather, it was based on the reasonable reliance of GCI on statements from USAC repeatedly suggesting to GCI and its HCP customers that the confirmation of service dates from filing the Form 467 would address the underlying issue. This reasonable reliance was exacerbated by the fact that GCI approached USAC in the fall of 2016 precisely because of GCI's recognition that funding commitments typically become fixed after issuance – precisely what USAC indicated to GCI almost one year later on the September 2017 conference call. In retrospect, USAC staff either never understood the issue or, if they did, they were not willing to engage with GCI or Alaska HCPs on how best to address it. Either possibility should not be acceptable to the Commission

[26] *See* 47 C.F.R. § 54.719.

and should not be a basis for foreclosing review of USAC's policy. Indeed, had USAC staff engaged on the issue initially and been transparent that USAC would not or could not provide a solution, the issue could have been presented to the Commission sooner and in a way that was less disruptive to affected HCPs. Moreover, it would be unfair to say GCI missed its opportunity for a remedy when GCI identified this problem in advance and sought in good faith to engage with USAC to address it. Penalizing such conduct is not in the public interest.

USAC's claim that GCI's sole recourse in this matter was to appeal the funding commitments themselves[27] is incorrect. This is because funding commitments are generally issued well-before the end of the funding year, prior to when actual service start/end dates are known.[28] Thus, appealing funding commitments would be burdensome and pointless prior to when final service dates are known. Arguably, the USAC "decision" here being appealed is USAC's implementation of its policy against so-called "duplicate" funding requests in the fall of FY 2016 – which GCI constructively challenged at the time it occurred. Indeed, the sole reason GCI did not pursue an appeal then was USAC's apparent assurances that the Form 467 process could and would address the funding gap problem.

In addition to the unique and special circumstances associated with USAC's conduct, the Commission has often recognized the unique harshness of the weather in Alaska, and its impact on construction timing, in granting waivers. For example, in the *AWN Order*, the Wireless Telecommunications Bureau granted a waiver of a construction deadline to AWN, a subsidiary of GCI, in part due to:

[27] *USAC GCI Appeal Decision*, Exhibit 1 at 3.

[28] Although funding commitments for FY 2016 were issued in April 2017 (*i.e.*, in month nine of the funding year that started July 1), in FY 2018 (for example), Telecommunications Program commitments were issued in November 2018 (*i.e.*, month five). Final service dates typically cannot be fully confirmed until after the funding year has concluded.

> [t]he unique challenges of bringing widespread service to Alaska [that] are not present in any other state. The Commission has found that carriers in Alaska face unique conditions due to "its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season." Alaska is a land of atypical geography, with hundreds of islands, many undeveloped; vast mountain ranges, including America's highest peak, Denali; and extreme weather. … Travel in Alaska can be extraordinarily difficult: many areas can only be reached by aircraft, and others only by Alaska's famed ice roads in the winter months.[29]

In recently upholding the *AWN Order*, the Commission specifically affirmed the Bureau's finding that Alaska's harsh climate and remoteness constituted a unique factual circumstance providing the basis for a waiver under Section 1.925 (b)(3)(ii) of the Commission's rules.[30]

Lastly, all of these events occurred with the backdrop of the unusual circumstances associated with funding year 2016. In USAC's defense, at the time many of the events at issue occurred USAC was implementing filing windows and preparing to implement *pro rata* funding reductions, both for the first time in RHC program history. There were many issues of first impression during that time and this funding gap issue may well have been one of them. The Commission has repeatedly recognized the unprecedented impacts associated with the RHC program hitting the cap for the first time and should acknowledge this impact on the specific events here that were coincident.[31]

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[29] *AWN Order*, 32 FCC Rcd at 4731-32. [Internal quote cites to *Connect America Fund; Universal Service Reform — Mobility Fund; Connect America Fund - Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10162, para. 72 (2016) (*Alaska Plan*) (citing *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17829, para. 507 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. Direct Communications Cedar Valley, LLC v. FCC*, 753 F.3d 1015 (10th Cir. 2014)). All other footnotes from this text are omitted.]

[30] *See In the Matter of Petition of General Communication, Inc. for Waiver*, 33 FCC Rcd 2693, 2705 (2018).

[31] *See Alaska Waiver Order*, 32 FCC Rcd at 5465, ¶ 8 (recognizing "unique circumstances presented by the impact of the pro-ration on HCPs in remote Alaska, as well as the extreme disproportionate hardship that it represents [on Alaskan HCPs].").

In conclusion, a waiver of the appeal deadline – if it is needed – is justified due to unique and unusual circumstances associated with GCI's efforts to address this issue and avoid the need for a costly and unnecessary appeal process, and reasonable reliance by GCI and affected HCPs on statements from USAC staff that suggested a solution to the problem was available without the need for an appeal. Only after the possible appeal deadline had passed did USAC make it apparent to affected parties that this was not the case. In addition, the conditions in Alaska making it all but impossible to establish installation dates in advance, and the special challenges of the FY 2016 funding year for USAC, also represent special circumstances justifying a waiver.[32] In the next section we focus on the public interest considerations justifying waiver of the appeal deadline (if necessary), and justifying waiver of any Commission Rules related to commitment amounts that potentially bar providing relief for affected HCPs.[33]

B. Disregarding the Impact of Extreme Weather Conditions that Inevitably Cause Post-Commitment Changes in Service Dates Unduly Burdens Health Care Providers in Alaska, and is Contrary to the Public Interest.

As GCI observed in the fall of 2016, USAC's then new policy of forcing applicants and service providers to precisely determine in-service dates in advance inevitably leads to gaps in funding. This is because when the new service is delayed, the funding commitment for the old

[32] While the unique circumstances discussed above provide a justified basis for waiver of the timing requirements of Sections 54.719(a) and 54.720(b) if necessary, the public interest in preventing undue harm to rural Alaskan health care services itself provides a separate and additional basis for granting a waiver of those rule sections. *Cf., Letter to Alex Sene*, 32 FCC Rcd 6436 (WTB, 2017). In that case, the Wireless Telecommunications Bureau granted a waiver of a construction deadline to the American Samoa Telecommunications Authority ("ASTCA"), due to geographic conditions and remoteness similar to circumstances in Alaska. *Id.* at 6438-6441. Because ASTCA's request for extension of time to construct was untimely filed, however, the Bureau also granted a waiver of the Section 1.946(e) filing deadline, noting that the "overarching public interest benefits supporting a waiver of ASTCA's five-year construction deadline also support ASTCA's request that we entertain its late-filed petition." *Id.* at note 3. In the present case, GCI does not believe that this Request for Review is untimely filed, but nevertheless seeks waivers of Sections 54.719(a) and 54.720(b) in an abundance of caution.

[33] The unique and special circumstances outlined in this section equally support a Commission waiver of any Rules potentially barring funding relief.

service runs out of money. The reverse occurs for the funding commitment for the new services where a delay results in committed funding going unused.

The Commission has frequently recognized that extreme weather and other factors impact the installation of services in very remote areas of the country and with some regularity grants waivers under such circumstances.[34] In this case however, no deadlines were missed to install services within the funding year and the only issue is whether the exact month services would be installed during the funding year could be pinpointed months in advance. The failure to accurately make such a prediction is the proximate cause of the funding losses at issue. Given the recognized harshness and unpredictability of Alaskan winters, it is unreasonable, unduly burdensome on the impacted HCPs, and contrary to the public interest to require that level of predictive accuracy in order to obtain vitally needed funding for which these HCPs are otherwise eligible.

USAC's misguided policy of requiring impossible accuracy in service start/end dates at the outset of the funding year has caused gaps in funding to rural Alaskan HCPs, which is contrary to the public interest. In the *Alaska Waiver Order*, the Commission recognized that RHC funding losses associated with pro-ration meant "[p]otential non-payment and service disruptions to [rural Alaskan] HCPs could ensue, with significant public health consequences."[35] In the present case, USAC's policy has unnecessarily and arbitrarily generated a similar risk of non-payment and service disruptions.

Furthermore, because extreme weather delays are significantly more common in Alaska than elsewhere, USAC's misguided policy disproportionately burdens HCPs there. This

[34] *See AWN Order*, *supra* note 8; *see also, e.g., Request for Waiver by the Utah Education and Telehealth Network*, CC Docket No. 02-6, Order, 33 FCC Rcd 4607, 4611-12, ¶ 12 (Wireline Comp. Bur. 2018) (extension of one-year deadline for fiber installation granted due in part to "very short annual construction season due to weather").

[35] *Alaska Waiver Order*, 32 FCC Rcd at 5464, ¶ 5.

unnecessary and disproportionate burden on Alaskan HCPs is contrary to the public interest. In the *Alaska Waiver Order*, the Commission recognized that "Alaska's large size, varied terrain, harsh climate, isolated populations, and lack of infrastructure are well-known challenges. In remote parts of the state, in particular, these challenges can translate into high costs of service, including high healthcare-related communications services."[36] The Commission granted a waiver in that case, due to the resulting "extreme disproportionate hardship" that increased costs would have on rural Alaskan HCPs.[37] This same extreme disproportionate hardship exists in the present case.

Finally, there is no public interest justification for USAC or the Commission adopting policies that deprive Alaskan HCPs of needed service upgrades, that impose financial risk on HCPs that elect to obtain upgrades, or that make such upgrades possibly only on July 1 each year (at the start of the funding year). The only possible benefit to such a policy – minimizing the size of funding commitments by a month or so – does not hold up under scrutiny. First, the no-overlap policy still leaves unused funding on the commitment for the new (typically more costly) service which has been delayed. Indeed, a solution that will provide relief in many cases is to allow HCPs to tap unused funding for the new service through service substitution, or for USAC or the FCC to allow transfer of unused funding on the new service FCL to the FCL for the old service. Lastly, any unused funding on the commitment for the old service is mitigated by the now codified ability to rollover unused funds for use in future funding years.

In sum, unique and special circumstances and the public interest support the Commission's grant waivers of Sections 54.719(a), 54.720(b) and 54.675 of its rules, if necessary, to ensure HCPs

[36] *See id.* ¶ 4 (citation omitted).

[37] *Id.* at 5465.

in very remote areas of Alaska receive uninterrupted RHC program support in funding year 2016. Grant of such waivers is justified due to the unique impact of harsh weather on construction deadlines in Alaska, and the reasonable, good faith reliance of GCI and the HCPs on statements from USAC that turned out to be either incomplete or inaccurate. Grant of waivers is also necessary to ensure rural Alaskan HCPs can obtain the services they need, including upgraded services during the funding year, which are in the public interest, while avoiding unduly burdensome gaps in funding which will cause potential public health consequences and which are unnecessary and contrary to the public interest.[38]

V. REQUEST FOR RELIEF.

For the reasons stated herein, the Commission should direct USAC to return to allowing HCPs to specify the desired number of months of service in their funding requests without regard to so-called overlapping service dates. This will resolve this issue going forward. For the funding year 2016 FRNs identified herein, the Commission should direct USAC to adjust the service dates of the relevant FCLs to reflect the services actually provided. This can be done utilizing unused FY 2016 funding previously committed to these specific HCPs without the need to authorize new RHC funding.[39] In all cases, we recognize that any relief granted for FY 2016, is subject to applicable *pro-rata* FY 2016 funding reductions.[40]

---

[38] *See Alaska Waiver Order*, 32 FCC Rcd at 5464, ¶ 5 (recognizing the "significant public health consequences" of unexpected funding reductions to HCPs in Alaska).

[39] GCI calculates that the total gap in funding for the HCPs covered in this appeal (old services that had to be extended) is $2,183,561.46; while the total amount that was committed to these HCPs and unused (new services that were delayed) is $3,030,348.72. Thus these funding gaps can be resolved using committed funds while leaving a positive balance of committed unused FY 2016 funding of $846,787.26.

[40] GCI intends to absorb the *pro rata* reductions from FY 2016 as they apply to the funding gaps here, as permitted in the *Alaska Waiver Order*. The Commission should not, however, order "relief" here that simply allows GCI to absorb the lost funding associated with these gaps in service. Such an outcome would be truly arbitrary, violating universal principles of sufficiency and predictability. *See* 47 U.S.C. § 254(b)(5)

VI. CONCLUSION

For the reasons stated herein, the Commission should reverse USAC's policy regarding HCPs seeking consecutive funding requests for different services and provide the relief requested herein. USAC's policy contradicts Commission Rules for the RHC program that allow eligible HCPs to obtain telecommunications services at the bandwidths they require to support health care in rural areas. To the extent waivers of FCC Rules are required, to allow this appeal or to grant the relief requested, GCI has demonstrated unique and special circumstances that warrant such waivers, and shown that such waivers are in the public interest because they will ensure eligible funding will be utilized for its intended purposes and will avoid unnecessary economic hardship on rural Alaskan HCPs.

Respectfully submitted,

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Counsel for GCI Communication Corp.

July 12, 2019

CERTIFICATE OF SERVICE

I certify that in accordance with 47 C.F.R. Section 54.721(c) I served a copy of this Request for Review on the USAC Administrator consistent with the requirement for service of documents set forth in Section 1.47 on July 12, 2019.

Jeffrey A. Mitchell, Esq.

Exhibit 1

Universal Service Administrative Co.

Rural Health Care Division

Notice of Dismissal

Via Electronic Mail

May 13, 2019

Ms. Ariel Burr
General Communication, Inc.
2550 Denali Street, Suite 1000
Anchorage, AK 99503

Re: General Communication, Inc. – Appeal of USAC's Decision for the Funding Request Numbers Listed in Appendix A

Dear Ms. Burr:

The Universal Service Administrative Company (USAC) has completed its evaluation of the November 20, 2017 letter of appeal (Appeal) submitted on behalf of General Communication, Inc. (GCI), for the health care providers (HCPs) listed in Appendix A.[1] The Appeal requests review of information provided by USAC on a September 21, 2017 call, and asks that USAC waive its rules to increase the funding commitment amounts for the funding year 2016 (FY 2016) funding request numbers (FRNs) listed in Appendix A in the Rural Health Care Telecommunications Program (Telecom Program) Program.[2]

USAC has reviewed the Appeal and the facts related to this matter and has determined that Federal Communication Commission (FCC) rules and requirements support the dismissal of the Appeal because GCI is not requesting review of an appealable USAC action or decision, and, instead, requests a waiver of FCC requirements for the Telecom Program.

Background

HCPs request funding through the Telecom Program by submitting an FCC Form 466.[3] If USAC approves the funding request, it will issue a funding commitment letter indicating the

[1] *See* Letter from Jeffrey A. Mitchell, Counsel for General Communications, Inc., Lukas, Lafuria, Gutierrez & Sachs, LLP to Rural Health Care Division, USAC (Nov. 20, 2017) (Appeal).
[2] *See* Appeal at 1. USAC's My Portal system will not allow an HCP to enter a service end date that is after the funding end date.
[3] *See* Health Care Providers Universal Service, Funding Request and Certification Form, OMB 3060-0804 (July 2014) (FCC Form 466); Form 466 Instructions, Rural Health Care Universal Service Mechanism, OMB 3060-0804 at 1, 3-6 (July 2014) (FCC Form 466 Instructions).

support amount.[4] Once USAC has issued a funding commitment letter, support under the letter is capped at the amount provided in the letter.[5]

FCC rules permit an aggrieved party to request review of an action taken by USAC or a USAC decision by filing an appeal within 60 days from the date of the action or decision.[6] However, USAC is not authorized to waive the FCC's rules and requirements for the Telecom Program.[7] Rather, parties seeking waivers of the Commission's rules must seek relief directly from the FCC.[8]

FRNs in Appendix A

After receiving commitments for FY 2016, the HCPs listed in Appendix A requested an adjustment of the funding period for the FRNs listed in Appendix A to reflect the anticipated installation of upgraded services in the same funding year.[9] USAC indicated that the funding period could be adjusted through the submission of FCC Forms 467 (Connection Certification).[10] On September 21, 2017, USAC clarified during a conference call that submission of the FCC Forms 467 could not be used to increase the support *amounts* committed by USAC for these funding requests.[11]

GCI's Appeal

GCI appealed the information provided by USAC on the September 21, 2017 call, requesting a waiver of Telecom Program requirements to increase the commitment amounts for the FY 2016 FRNs listed in Appendix A.[12]

[4] *See Rural Health Care Support Mechanism*, Report and Order, WC Docket No. 02-60, 27 FCC Rcd 16678, 16794, para. 270 (2012) (*Healthcare Connect Fund Order*).
[5] *See Healthcare Connect Fund Order*, 27 FCC Rcd at 16807, para. 315.
[6] *See* 47 C.F.R. §§ 54.719(a) (permitting requests for review of "an action taken by the Administrator"), 54.720(b) (permitting requests for review of "an Administrator decision").
[7] *See generally*, 47 C.F.R. § 54.702(c) (2014) ("[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."); 47 C.F.R. § 1.3 (2014) ("The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedures Act and the provisions of this chapter.").
[8] *See* 47 C.F.R. § 54.719(c).
[9] *See* Email from Rural Health Care Division, USAC to Ariel Burr, Universal Service Fund Manager, Managed Broadband Services (Jan. 12, 2017).
[10] *See* id.; Appeal at 1.
[11] *See* Appeal at 3. *See also supra* note 5.
[12] *See* Appeal.

Dismissal of GCI's Appeal

USAC finds that FCC rules support the dismissal of the Appeal because GCI is not requesting review of a USAC "action" or "decision" appealable pursuant to FCC rules.[13] Specifically, the information provided in USAC's September 21, 2017 conference call with GCI was not a USAC action or decision but, rather, a clarification of FCC rules and requirements.

To the extent GCI wished to appeal the funding amounts for the HCPs' commitments, it was required to submit an appeal to USAC within 60 days of the date of the issuance of the FY 2016 funding commitment letters.[14] As explained above, USAC is not authorized to waive the FCC's rules and requirements for the Telecom Program.[15] Thus, where the Appeal requests that USAC adjust the FY 2016 funding commitment amounts for the FRNs listed in Appendix A, GCI must seek relief directly from the Federal Communication's Commission on this matter, as it did not appeal the support amounts to USAC within 60 days of the date of the issuance of the FY 2016 funding commitment letters.[16]

If you wish to appeal this decision or request a waiver, you can follow the instructions pursuant to 47 C.F.R. Part 54, Subpart I (47 C.F.R. §§ 54.719 to 725). Further instructions for filing appeals or requesting waivers are available at:

http://www.usac.org/about/about/program-integrity/appeals.aspx.

Sincerely,

/s/ Universal Service Administrative Company

cc: Jeffrey A. Mitchell, Counsel for General Communication, Inc., Fletcher, Heald & Hildreth

[13] *See supra* note 6.
[14] *See supra* note 6.
[15] *See supra* note 7.
[16] *See supra* note 8.

Appendix A
List of Appealed FRNs

HCP Number	HCP Name	FRN	FCL Issuance Date	Service Start Date Indicated in FCL	Service End Date Indicated in FCL
10174	Nightmute Clinic	1691182	April 11, 2017	August 13, 2016	December 8, 2016
10175	Nunapitchuk Clinic	1691379	April 11, 2017	August 13, 2016	December 8, 2016
10178	Pitkas Point Clinic	1691396	April 11, 2017	August 13, 2016	December 1, 2016
10181	Russian Mission Clinic	1691399	April 11, 2017	August 13, 2016	December 1, 2016
10182	John Afcan Memorial Clinic	1691405	April 11, 2017	August 13, 2016	December 1, 2016
10183	Scammon Bay Clinic	1691408	April 11, 2017	August 13, 2016	December 8, 2016
10184	Shageluk Clinic	1691411	April 11, 2017	August 13, 2016	January 14, 2017
10186	Sleetmute Clinic	1691413	April 11, 2017	August 13, 2016	December 8, 2016
10187	Stony River Clinic	1691414	April 11, 2017	August 13, 2016	December 8, 2016
10188	Toksook Bay Clinic	1691417	April 11, 2017	August 13, 2016	December 1, 2016
10190	Kathleen Daniel Memorial Hospital	1691419	April 11, 2017	August 13, 2016	December 1, 2016
10192	Crooked Creek Clinic	1691415	April 11, 2017	August 13, 2016	December 8, 2016
10195	Grayling Clinic	1691421	April 11, 2017	August 13, 2016	December 8, 2016
10196	Theresa Demientieff Health Clinic	1691422	April 11, 2017	August 13, 2016	January 14, 2017
10199	Catherine Alexie Clinic	1691181	April 11, 2017	August 13, 2016	December 8, 2016
10204	Kotlik Clinic	1691425	April 11, 2017	August 13, 2016	December 8, 2016
10206	Kwigillingok Clinic	1691427	April 11, 2017	August 13, 2016	December 8, 2016
10208	Theresa Elia Memorial Clinic	1691428	April 11, 2017	August 13, 2016	December 8, 2016
10209	Mekoryuk Clinic	1691179	April 11, 2017	August 13, 2016	December 1, 2016
10210	Mountain Village Clinic	1691429	April 11, 2017	August 13, 2016	December 8, 2016
10214	Clara Morgan Sub-Regional Clinic	1691432	April 11, 2017	August 13, 2016	December 1, 2016
10215	Anvik Clinic	1691433	April 11, 2017	August 13, 2016	December 15, 2016
10220	Chuathbaluk Clinic aka Marie Kameroff Health Clinic	1691436	April 11, 2017	August 13, 2016	December 1, 2016
10992	Bristol Bay Area Health Corporation dba Kanakanak Hospital	1688624	April 11, 2017	July 1, 2016	September 30, 2016
10191	Tununak Clinic	1691178	April 11, 2017	August 13, 2016	December 1, 2016
10198	Crimet Phillips Sr. Clinic	1691171	April 11, 2017	August 13, 2016	January 14, 2017

10194	Emmonak Subregional Clinic aka Pearl E Johnson Subregional Clinic	1686891	September 21, 2016	July 1, 2016	August 12, 2016
10194	Emmonak Subregional Clinic aka Pearl E Johnson Subregional Clinic	1691440	N/A	N/A	N/A

Exhibit 2

8300 Greensboro Dr.
Suite 1200
McLean, VA 22102
WWW.FCCLAW.COM

Jeffrey A. Mitchell
[redacted]
NOT ADMITTED IN VA

LNGS | LUKAS, NACE, GUTIERREZ & SACHS, LLP

October 18, 2013

SENT VIA EMAIL

Mr. Craig Davis
Vice-President, Rural Health Care Division
Universal Service Administrative Company
2000 L Street NW, Suite 200
Washington, DC 20036

Re: Application of Cardinal Change Doctrine in the Rural Health Care Telecommunications Program

Dear Craig:

I am writing on behalf of General Communication, Inc. ("GCI") to address USAC's apparent change of practice regarding bandwidth upgrades requested by our health care provider ("HCP") customers pursuant to multi-year "evergreen" agreements that clearly contemplated such upgrades. Contrary to Federal Communications Commission ("FCC" or "Commission") orders, USAC now appears to be treating all bandwidth upgrades as *per se* cardinal changes, without any review or analysis of the bidding and contracting documents. As a result, USAC has started revoking evergreen status from these agreements or denying the bandwidth upgrades outright as a competitive bidding violation. In either case, USAC's actions force an unnecessary re-bid process that imposes significant administrative burdens on HCPs (and on USAC), disrupts the expectations both parties had when entering into the multi-year agreement, and delays the installation of requested bandwidth upgrades, directly affecting HCPs ability to provide medical care in these remote communities.

USAC's approach undermines the HCPs' ability to reduce and manage costs through term and volume discounts that are often included in multiyear contracts, because neither the HCP nor the service provider can be assured that USAC will honor the contract for the entire term if and when the HCP needs bandwidth upgrades. This inflexible approach will cause HCPs to enter into costly single-year contracts or multiyear contacts for high bandwidth volumes that may be excessive during the first part of the contract. Either result will raise RHC program costs and hamper HCPs' ability to implement new telehealth technologies, to expand telehealth installations, and to implement electronic healthcare records systems.

The apparent practice of automatically treating bandwidth upgrades as *per se* outside of the original contract – a policy which has not been previously or consistently applied – contradicts long-standing FCC rules and orders that require a fact-specific analysis of whether the requested upgrade constitutes a cardinal change.[1] By automatically denying or revoking evergreen without

[1] *See Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on

analysis of the underlying facts, USAC is disregarding the scope of the original procurement, the service provider's specific offer of services, and the provisions of the actual contract between the parties – each a relevant factor when considering whether a cardinal change in the contract has occurred and a re-bid is thus required.[2] It is also inconsistent with the training guidance USAC has provided to HCPs. We respectfully ask that USAC (1) reconsider its apparent practice with regard to requests for bandwidth upgrades and apply the correct cardinal change standard prospectively and (2) where appropriate, reconsider on its own motion recent prior cases where the cardinal change standard was not correctly applied. We note, however, that in making these requests for USAC to review the legality of its practices and to conform them to FCC orders, we are not initiating an appeal of any specific requests, and we reserve the right to do so, whether before USAC or the FCC, at our election.

General Background

A current five-year master service agreement between GCI and Yukon-Kuskokwim Health Corporation ("YKHC") provides facts that illustrate the problems with USAC's current approach.[3] We provide these facts to provide an illustrative but concrete context for this discussion of bid and contracted-for bandwidth upgrades, and the appropriate, and fact-specific, nature of the cardinal change rule – which is wholly at odds with what appears to be USAC's *per se* practice.

In April 2011, YKHC posted Form 465s on USAC's website seeking services for over 40 YKHC affiliated HCPs across Alaska. A representative Form 465 indicated:

> YKHC's service needs involve the transmission of health care data and the provision of health care services between and among YKHC locations in southwestern Alaska, as well as between YKHC facilities and locations outside of the YKHC service region. These needs include but are not limited to the transmission of patient records, including electronic medical records (EMR); high-resolution medical images, including computed tomography (CT) scans and picture archiving and communications systems (PACS) images; telemedicine consultations, including telepsychiatry services; and the provision of Internet access and related services. YKHC's service needs require reliable bandwidth capability at speeds that meet or exceed T-1 levels or higher.

Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 5318, 5425-5426, ¶¶ 227-29 (1997) (*Fourth Order on Reconsideration*) (and cases cited therein); *see also Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Sixth Order on Reconsideration in CC Docket No. 97-21 and Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756, ¶ 59 (1999) (*Fifteenth Order on Reconsideration*) (reaffirming applicability of cardinal change doctrine to RHC program); *Rural Health Care Mechanism*, WC Docket No. 02-60, ¶ 261 (2012) (*HCF Order*) (reaffirming and extending cardinal change doctrine to Healthcare Connect Fund ("HCF")).

[2] *See, e.g., AT&T Communications v. WilTel*, 1 F.3d 1201, 1205 (Fed. Cir. 1993) ("The [appropriate] analysis . . . focuses on the scope of the entire original procurement in comparison to the scope of the contract as modified. Thus a broad original competition may validate a broader range of later modifications without further bid procedures.").

[3] GCI has other evergreen agreements potentially affected by the issues discussed in this request. As indicated, GCI intends to pursue any necessary appeals of individual FRNs separate from this request.

Prior to receipt of competitive bids, YKHC made available to all potential bidders a network diagram and a detailed list of network requirements that applied to all the YKHC locations. These requirements included the following (emphasis added):

> **YKHC Network Requirements (WAN)**
> 1. Bandwidth speeds that meet or exceed the equivalent of a T-1 (1.5 Mbps) or higher.
> 2. *Ability to increase bandwidth as needed within 48 hours of notification.*
>
> * * * *
>
> **YKHC Internet Requirements**
> 1. Bandwidth speeds that meet or exceed the equivalent of a T-1 (1.5 Mbps) or higher.
> 2. *Ability to increase bandwidth as needed within 48 hours of notification.*

GCI submitted a proposal and, on September 1, 2011 (well after the expiration of the 28-day waiting period), YKHC and GCI entered into the contract for the services requested by YKHC (GCI Contract Number HC-320) (the "YKHC Contract"). The contract has a five-year term, defined the scope "Services" to be provided as including MPLS and Internet access services at different bandwidths and using different delivery methods identified in "Attachment A: *Services, Prices and Schedules*" to the contract (page 1), and specifically provided (in Section 13 of the contract):

> It is the intention of the Parties that the bandwidth quantity of different sites will change as the medical services of the sites change, and that the service delivery method for sites initially served by satellite will change to DeltaNet delivery when this service becomes available. Prices will also change if, for whatever reason, the delivery method is changed. Any changes in service delivery or pricing will be done under the Change Order Process. The prices for different bandwidth and delivery methods are shown in Attachment A.

Attachment A indentifies pricing for service at the initial bandwidth levels for each YKHC HCP based on the method of service delivery (*e.g.*, Satellite, DeltaNet terrestrial microwave, Terra-SW fiber) (pages 12-16), and provides a change order process (pages 17-18).

USAC issued numerous funding commitment letters ("FCLs") to YKHC HCPs for MPLS or Internet access service at specified bandwidths. Each initial FCL indicated that the underlying contract (*i.e.*, the YKHC Contract) was evergreen and that "for the life of the contract . . . you do not need to re-compete *the service(s) identified above* . . ." (emphasis added).

Subsequent to these initial FCLs, certain YKHC HCPs have executed change orders to obtain upgraded bandwidth pursuant to the contract provisions noted above. Initially, these bandwidth changes were funded without impact to the contract's evergreen status; more recently, however, USAC has been changing the contract's status from evergreen to "month-to-month" and subsequently denying the requests outright as a competitive bidding violation. Because these more recent determinations were made after June 2, 2013, the last day to submit a Form 465 in

time to receive full funding for FY 2013, RHC funding is not available for the upgraded circuits after July 1, 2013 (the start of FY 2013). USAC's funding denials provide the following explanation:

> The HCP has violated the 28-day competitive bidding rule as required by the Federal Communications Commission rule section 54.603(b)(3), which states The health care provider shall wait at least 28 days from the date on which its FCC Form 465 is posted on the website before making commitments with the selected telecommunications carrier(s).

As a result of USAC's actions, affected HCPs face immediate service downgrades.

Applicable Rules

Determining whether an HCP can upgrade bandwidth under an evergreen contract without initiating a new competitive bidding process requires consideration of whether such a change represents a "cardinal change" to the contract.[4] Cardinal change is a federal doctrine that considers whether a contract change is minor – *i.e.*, whether the change is "within the scope of the original contract."[5] As the Commission has explained: "Ordinarily a modification falls within the scope of the original contract if potential offerors reasonably could have anticipated [the modification] under the changes clause of the contract."[6] And further: "The cardinal change doctrine recognizes that a modification that exceeds the scope of the original contract harms disappointed bidders because it prevents those bidders from competing for what is essentially a new contract."[7]

Significantly, a key case referenced by the FCC in illustration of the cardinal change doctrine involves a telecommunications services contract in which the court held that a substantial increase in bandwidth did not represent a cardinal change. In that case, the federal government had procured 45 Mbps T3 circuits from a carrier pursuant to a competitively bid contract to provide telecommunications services at specifically referenced transmission rates that did not exceed 1.5 Mbps (*i.e*, T1).[8] The court explained:

> T3 is the next generation of dedicated transmission service. T3 conveys the same voice or data information as the other forms of dedicated transmission service, but at a higher rate of speed. The higher capacity T3 circuits convey information twenty-eight times faster than the T1 technology. In the interim between the original procurement and the [contract] modification, T3 became commercially available on a widescale. In light of the contractor's obligations to propose improvements to keep the Government's telecommunications technology

[4] *See HCF Order*, ¶ 261 ("[I]n the Primary Program an HCP must post a Form 465 and undergo a new competitive bidding process whenever it seeks to add services, make cardinal changes, or renew or extend the contract[.]").

[5] *See Fourth Order on Reconsideration*, ¶ 227.

[6] *Id.*

[7] *Id*, ¶ 228.

[8] *See AT&T*, 1 F.3d at 1204.

> in step with technology advances, T3 falls within the scope of the . . . contract.[9]

The Court also concluded that the T3 circuits represented the same "service" as the T1 circuits – *i.e.*, they were both a dedicated transmission service.[10] Finally, the Court held that an important factor in determining whether the contract change was cardinal was whether potential bidders were adequately advised of the potential that next generation dedicated transmission service (*i.e.*, T3 circuits) "would reasonably fall within the scope of the contract."[11]

In a similar vein, when the Commission articulated the "cardinal change" rule with respect to service modifications in RHCP (and E-rate) contracts, the Commission specifically used the cardinal change doctrine as the guide to delineate when additions of lines would be permissible as a minor modification, and when it would require re-bid.[12] If the Commission had meant to *per se* exclude service upgrades, there would have been no need to articulate the role of the cardinal change doctrine because all additions of lines would have been *per se* impermissible.

Furthermore, there is no relevant distinction between evergreen and month-to-month contracts here. In its discussion of evergreen contracts in the *HCF Order*, the Commission expressly stated: "[S]ervice upgrades will be permitted as part of an evergreen contract if the contemplated upgrades are proposed during the competitive bidding process, and the contract explicitly provides for the possibility of service upgrades."[13] Nothing in that Order indicates that the FCC intended this statement about service upgrades to be confined to the Healthcare Connect Fund, and did not also reflect the Commission's application of the cardinal change doctrine to evergreen contracts generally.[14]

Discussion

GCI can document many previous cases of USAC approving requested bandwidth upgrades without revocation of a contract's (including the YKHC Contract's) evergreen status. However, whether long-standing or recent, any automatic treatment of bandwidth upgrades is clearly at odds with the cardinal change doctrine as adopted by the FCC in 1997 and recently reaffirmed.

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[9] *Id.* at 1206.

[10] *See id.* at 1206-07.

[11] *Id.* at 1207 (the court concluded that the solicitation, which included a "Service Improvements" clause, provided reasonable notice to potential offerers).

[12] *Fourth Order on Reconsideration*, ¶¶ 224-229.

[13] *HCF Order*, ¶ 263.

[14] We recognize that the FCC in the *HCF Order* denied GCI's request to formally adopt a site and service substitution program for the Primary program. *See HCF Order*, ¶ 315 n.745. In doing so, however, the Commission simply noted that such a change was not properly proposed in the notice leading up to the *HCF Order*. *See id.* In addition, the site substitution process adopted in the HCF provided for "guaranteed" approval of site or service substitutions in cases under a consortium master services agreement where the total amount of the FCL is not affected. *See id.*, ¶ 315. Here, GCI is not seeking guaranteed approval for bandwidth upgrades but rather case-by-case determinations that conforms to the cardinal change standard. *Cf. Fifteenth Order on Reconsideration*, ¶ 59 (directing USAC to implement cardinal change doctrine for Primary program consortia applications over apparent USAC objections).

The cardinal change rules, which date back nearly to the RHCP's inception, require a fair consideration of the facts around each requested contract modification. At a minimum this should include an assessment of both the scope of the procurement, and the scope of the contract itself.[15] More specifically, this should include (1) examination of the original request for services and related documentation to see whether potential bidders were on notice that the contract would encompass the proposed modification and (2) review of the contract to determine whether the requested modification was contemplated by the parties including whether the contract provides a change order process. There is no indication USAC has been performing any review of these criteria at all in connection with the bandwidth upgrades that have been denied or placed in "month-to-month" status.

USAC's apparent practice of automatically treating bandwidth changes as *per se* cardinal changes requiring new competitive bids and new Form 465s is also at odds with relevant case law. For example, the *AT&T* case helpfully addresses how the cardinal change analysis should be performed in a telecommunications context involving bandwidth upgrades. The court held that the scope of the contracted-for service is determined with reference to the original solicitation and to the contract itself.[16] Such an analysis is by its very nature case-by-case. In the illustrative YKHC example, USAC never inquired with respect to bid documents necessary to examine these criteria.[17]

If one assumes – as was the case – that the YKHC network requirements document was in fact distributed to all potential bidders, then a fair reading of the YKHC procurement materials and the YKHC Contract shows that (1) potential bidders were reasonably on notice that the resulting contract would provide for increases in bandwidth and (2) GCI and YKHC contracted for MPLS (and Internet) service at multiple bandwidths, expected bandwidth upgrades as medical needs

---

[15] *See Fourth Order on Reconsideration*, at ¶¶ 227-28 (recognizing as relevant the reasonable expectations of potential bidders and the scope of the contract being modified).

[16] *See AT&T*, 1 F.3d at 1206-07 (contract review board erred by too narrowly interpreting RFP language governing services improvements and by employing a fixed definition of "service" when the contract at issue employed the term "service" in different ways).

[17] We are not aware of any program requirement that prevents service providers from supplementing the information on the Form 465, provided such information is made available fairly to all potential bidders. *See HCF Order*, ¶ 232 ("all potential bidders and service providers must have access to the same information and must be treated in the same manner."); *id.*, fn. 594 ("this does not prohibit applicants from seeking additional information about particular products or services during the competitive bidding process, or potential vendors from supplying it."). In addition, the YKHC Form 465 comports with USAC training guidance regarding the Form 465 description of services (emphasis in original):

> 1. Form 465
>
> - We recommend you do NOT request a specific telecom service and/or bandwidth
>
> -- TOO SPECIFIC: We need a T1 line
>
> - Instead you should describe the needs of the HCP:
>
> -- PREFERRED: We need to be able to transmit data and medical images
>
> - Being too specific locks you into receiving that service type only

See http://www.usac.org/_res/documents/RHC/training/2011/Competitive-Bidding-Webinar.pdf (last checked, Oct. 17, 2013).

changed, and provided a change order mechanism to promptly (within 48 hours) provide for upgrades needed by HCPs. With potential bidders on notice of the 48-hour bandwidth upgrade requirement, it cannot be said that competitive harm would occur if USAC funded upgrades during the five-year term of what it otherwise determined to be a valid evergreen contract.

The *AT&T* case is also instructive on the specific issue of whether the YKHC bandwidth upgrades should be considered a "new service" that requires rebidding. The court there held that a substantial increase in bandwidth – exceeding by a factor of 28 the highest bandwidth provided for in the RFP or the contract – was not a new service that required a new competitive bid.[18] While there are distinct facts in *AT&T* case not present here, the situation here is clearer, requiring less interpretation of a much less complex service request and contract. Indeed, here YKHC explicitly requested the "[a]bility to increase bandwidth as needed within 48 hours of notification" to which GCI proposed specific bandwidths and pricing which were accepted by YKHC. In the *AT&T* case, the upgraded T3 bandwidth was not even mentioned in the solicitation or in the initial contract – much less specific pricing provided – but the court still held the change to the upgraded circuits was not a cardinal change.

AT&T makes clear that the language in the solicitation and the contract ultimately determines the nature and scope of the service that was contracted for. In the YKHC example, YKHC explicitly sought services that would include multiple bandwidths ("T-1 levels or higher") and that would allow for bandwidth upgrades within 48 hours after a request from the HCP. In addition, the YKHC Contract explicitly defines the contracted-for "Services" to include all of what is clearly set forth in its Attachment A, which includes MPLS service at bandwidth levels ranging from 1.5 Mbps to 200 Mbps. And critically, the YKHC Contract has a clear statement of mutual intent to meet the growing medical needs of HCPs by facilitating 48-hour bandwidth upgrades.

USAC's advice to HCPs in its training materials also would be irrelevant if all service upgrades required a new Form 465 and 28-day competitive bidding. In its materials, USAC advises HCPs, "We recommend you do NOT request a specific telecom service and/or bandwidth," because "Being too specific locks you into receiving that service type only."[19] If all service upgrades, including specifically increases in bandwidth, are a cardinal change requiring a new Form 465 and a new receipt and evaluation of competitive bids, then there would be no reason why a HCP should avoid being locked in to a specific telecom service or bandwidth, other than that the HCP may have erred in its evaluation of what it needed at that particular moment. Put differently, treating all bandwidth upgrades as *per se* cardinal changes is functionally equivalent to specifying in the Form 465 that the HCP needed a 5 Mbps service: if it needs to change to a 6 Mbps service, it then needs to file a new Form 465 and conduct a new competitive bid.

Thus, USAC's automatic conclusion that the change orders for additional bandwidth are new contracts for services that must be subject to a new Form 465 and new competitive bid evaluation cannot be reconciled with the FCC's cardinal change doctrine.

[18] *See id.* at 1207 (contract defined Dedicated Transmission Services as the "service" at issue).

[19] *See* n. 17.

Conclusion

USAC's apparent policy that all bandwidth changes are *per se* cardinal changes that require re-bidding, even for a contract that was already determined to be evergreen when the changes are within the scope of the bidding and contract, is at odds with established FCC rules governing the cardinal change doctrine. Accordingly, we request USAC (1) review current and future bandwidth upgrades on a case-by-case basis, and (2) reconsider previous bandwidth upgrades for which USAC did not conduct such a case-by-case analysis. In doing so, USAC should reinstate evergreen status where it has been inappropriately removed.

Respectfully submitted,

Jeffrey A. Mitchell
Counsel to General Communication Inc.

cc David Capozzi, Esq., USAC
Jay Beard, USAC
Carolyn McCornac, USAC
John Nakahata, Esq.

Exhibit 3

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LLGS | LUKAS LAFURIA GUTIERREZ & SACHS LLP

November 20, 2017

VIA ELECTRONIC MAIL

Rural Health Care Division
Universal Service Administrative Company
Attention: Letter of Appeal
700 12th Street, NW, Suite 900
Washington, DC 20005

Re: General Communication, Inc. Appeal of Rural Health Care Division's Refusal to Process Certain Service Date Revisions for Funding Year 2016[1]

To Rural Health Care Appeals:

General Communication, Inc. (GCI) appeals the Universal Service Administrative Company (USAC) Rural Health Care Division's (RHCD) denial of requests to submit FCC Form 467s that establish correct service dates for approved (FY) 2016 funding commitments – and to adjust those funding commitments to accurately reflect services actually provided by GCI. Because of weather and climate conditions in Alaska it is impossible to determine in advance exactly when new services will be installed; therefore post-commitment service date adjustments for Alaskan HCPs are both foreseeable and inevitable. GCI explained this reality to RHCD staff prior to issuance of FY 2016 funding commitments – noting in particular the expected impact on funding commitment amounts – and sought guidance.[2] In response, RHCD staff explained to GCI (and later to applicants on multiple occasions) that after funding commitments were issued and once the installations had occurred, Form 467s could and should be utilized to adjust service dates.[3]

On September 21, 2017, after multiple requests to adjust service dates affecting numerous FY 2016 funding commitments, RHCD indicated to GCI during a conference call that it would not adjust any FY 2016 funding commitments to reflect actual dates of service for the affected

[1] Attachment 1 contains a summary of the affected health care providers (HCPs), requested service date revisions, and relevant funding commitments.

[2] *See* email from Jeffrey Mitchell, Lukas LaFuria Gutierrez & Sachs LLP (LLGS), to Nikoletta Theodoropoulos, Director, RHCD (Oct. 31, 2016) (Attachment 2).

[3] *See, e.g,* email from Caroline McCornac, RHCD, to Jeffrey Mitchell, LLGS, copy to Nikoletta Theodoropoulos, Director, RHCD (Nov. 8, 2016) (Attachment 3); email from Bernie Manns, RHCD, to Jennifer Bachman, GCI (Oct. 20, 2016) (Attachment 4); email from Bernie Manns, RHCD, to Ariel Burr, GCI, and Christina Hensley, Maniilaq Association (Jan. 12, 2017) (Attachment 5).

applicants.[4] This letter constitutes an appeal of this September 21, 2017 decision and is timely filed.[5]

Background

The FCC has long-recognized that applicants may modify or upgrade services within a contract during the course of a funding year.[6] Alternatively, an applicant may obtain services under an old contract for part of the funding year and, after new services are installed, may switch to obtaining services under a new agreement for the remainder of the funding year. In this case, both underlying contracts were competitively bid and were approved by RHCD as part of the funding commitment process. Whether service changes are within a single contract, or between adjacent contracts, the issue is practical and purely administrative: when do the old services end and the new services begin?

Prior to FY 2016, applicants seeking uninterrupted services straddling two separate contracts obtained two funding commitments and provided tentative service start/end dates reflecting when the upgraded services would be available. To address the uncertainty, the separate funding commitments might overlap – that is, the old service might be funded beyond the estimated start date for the new service, to provide a buffer in case installation of the new service was delayed. For FY 2016, after the FCC established RHC filing windows, RHCD sought to eliminate such overlaps, forcing applicants to choose non-overlapping service start and end dates.

[4] The September 21, 2017 conference call with GCI and undersigned counsel was on a USAC conference bridge organized by Karen Lee, RHCD Vice-President. The purpose of the call was to discuss GCI's August 25, 2017, letter to RHCD explaining, among other things, that GCI could not determine final amounts for purposes of the FY 2016 *Alaska Waiver* until the service date revision issue was resolved. *See* Attachment 6 at 1 (noting need to resolve pending requests "to make service end-date changes" via Form 467s); Rural Health Care Support Mechanism, Order, FCC 17-84, WC Docket No. 02-60, ¶ 6 (rel. Jun. 30, 2017) (*Alaska Waiver*). During the September 21, 2017 call, Ms. Lee, in addition to communicating the decision GCI is appealing here, indicated that any previous RHCD guidance stating or implying that FY 2016 funding commitments could be modified to address changes in service dates was erroneous.

[5] 47 C.F.R. §§ 54.719(a), 54.720(b) (providing 60 days from the date of issuance to appeal USAC actions or decisions). On October 16, 2017, and again on October 31, 2017, GCI requested that USAC provide a writing to confirm the decision communicated orally on September 21, 2017. As of the date of this appeal, USAC has not confirmed whether it will do so. In the absence of such a writing, GCI must treat September 21, 2017, as the decision date.

[6] *See* Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, Fourth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 5318, 5425-5426, ¶¶ 227-29 (1997) (adopting "cardinal change" standard for evaluating whether to allow mid-contract service modifications); *Rural Health Care Mechanism*, WC Docket No. 02-60, ¶ 263 (2012) (extending existing cardinal change rule to Healthcare Connect Fund).

That was the situation in October 2016 when GCI, with its customers asking for firm start/end-dates for services that had not yet been installed, sought guidance from RHCD staff. As GCI explained:

> The problem for the service providers – particularly in Alaska – is that it is not always possible to know much in advance when new services will in fact be available. This can be due to everything from unpredictable weather to federal permitting delays ([Bureau of Land Management], etc.).
>
> GCI wants to work with USAC to minimize unused funding commitments but they are in a difficult position because they don't want to put a customer in a position where GCI provides an "end date" for the old service and the customer gets cut off from funding when the new service is delayed by a month or more.[7]

On November 8, 2016, RHCD responded with the following guidance:

> Practically speaking, as long as the HCP does not submit the Form 467, service start and end dates could be modified on an [Funding Commitment Letter (FCL)] (in most cases). To that end, if an HCP plans to upgrade service in January, and there is an FCL for the original service for July through Dec, and one FCL for the upgraded service for Jan – June, as long as the Form 467 hasn't been submitted for either of those FCLs, the dates for both FCLs could be adjusted to match the dates of the service change (in most cases).[8]

Over the course of FY 2016, RHCD staff provided similar guidance to GCI and its customers.[9] As a result of this guidance, GCI and its customers understood the Form 467 process would protect them from unnecessary gaps in funding.

On September 21, 2017, RHCD communicated for the first time that, notwithstanding Form 467 adjustments to *service dates* to reflect actual service periods, RHCD will not make corresponding adjustments to the *funding amount* for any affected FCLs. However, because of the previous

---

[7] *See* Attachment 2.

[8] *See* Attachment 3 at 1. To be sure RHCD understood GCI's concern about health care providers potentially losing funding in these "gaps", GCI-requested a follow-up call the next day. On that call RHCD staff informed GCI (paraphrasing): "USAC no longer has the resources to babysit these funding requests."

[9] *See* Attachment 4 at 1 (responding to question about whether the end-date for Bristol Bay Area Health Corporation FRN 1688624 would be adjusted, Mr. Manns stated: "Yes, it will be adjusted to 9/30/16 to correspond with the anticipated install date of 10/1/16 of the 30M service on FRN 1690396. *Once again the commitments are not finalized until the FCC Form 467 is received from the HCP and the [service support schedule] is produced*.") (emphasis added); Attachment 5 at 1 ("FRNs 1689896, 1689903, and 1689900 – The funding start date for these FRNs will be adjusted to reflect the anticipated install dates you provided in your response. The corresponding forms for the existing service will have the funding end date adjusted to end prior to the start of these upgrade forms.").

RHCD guidance repeatedly directing GCI to the Form 467 process as the appropriate remedy for service date adjustments, GCI did not file appeals of the relevant funding commitments when they were issued in April 2017.

Request for Relief

GCI requests that RHCD process Form 467s to reflect the actual periods during which it provided services during FY 2016, and to make corresponding adjustments to underlying funding commitments. We do not seek relief or exemption from *pro rata* cap reductions that would apply to the revised funding amounts. (GCI does intend to provide relief pursuant to and consistent with the *Alaska Waiver*.)

GCI does not believe it is reasonable for affected applicants to incur these additional costs and the resulting financial hardship – particularly when GCI notified RHCD in advance of the funding year and received (along with applicants) consistent guidance from RHCD staff indicating that the Form 467 filing process was the appropriate way to address the issue. If USAC fails to act, we calculate the total amount of the funding shortfall in these cases to be $2,093,973.00 (subject to any applicable *pro rata* reductions).

Notably, the *Alaska Waiver* will not allow GCI to waive this funding gap for affected customers (even if it were willing to do so), thus putting substantial financial hardship on these applicants and creating additional uncertainties for Alaskan applicants in FY 2017.[10] Moreover, if RHCD fails to act with respect to FY 2016 – and to address this issue in future years – applicants will have incentives to over-subscribe to services, thereby tying-up scarce RHC funding in commitments that will not be fully utilized.[11]

Note the Commission has previously directed USAC to change RHCD administrative processes in cases where RHCD has failed to sufficiently accommodate program rules and requirements. This occurred in 1999 when the Commission expressly directed USAC to allow applicants to add new consortia members to an existing contract by submitting a new Form 465.[12] More recently,

[10] *See Alaska Waiver* at ¶ 9 ("For all eligible HCPs in remote Alaska that received funding commitments associated with the second filing window period for funding year 2016, we waive our rules to allow service providers to voluntarily reduce their rates on this one-time basis, while holding constant the pro-rated support amount contained in the HCPs' funding commitment letters.") GCI has separately sought guidance from RHCD concerning how to prevent a recurrence of this problem in FY 2017. *See* Letter from Jeffrey Mitchell, Counsel for GCI, to Karen Lee, Vice President, RHCD (Oct. 25, 2017).

[11] For example an HCP might seek a contract to provide 12 months of a more expensive upgraded service, but simply invoice for a less costly service for an indefinite period until installation occurs.

[12] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Sixth Order on Reconsideration in CC Docket No. 97-21 and Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756, ¶ 59 (1999) ("We understand that USAC might prefer

in 2014, the Commission overruled USAC after RHCD had refused to process mid-year service upgrades pursuant to approved evergreen contracts.[13] The current situation resembles these earlier cases where RHCD administrative processes conflicted with both the letter and spirit of program rules.

Finally, because this issue solely concerns the mechanics of ensuring uninterrupted funding for applicants, it is practical and purely administrative in nature. Moreover, the current situation was solely caused by the functioning (or malfunctioning) of RHCD administrative processes – including RHCD's failure to clearly communicate what those processes were. Accordingly, we seek relief from USAC rather than a waiver of rules from the Commission.[14]

Sincerely,

Jeffrey A. Mitchell
Counsel for General Communication, Inc.

Attachments

that rural health care providers list all possible participants in their initial applications, thus, permitting USAC to evaluate all participants at once. We, however, are not persuaded that the administrative difficulties are so great as to warrant restricting joint purchasing and network-sharing arrangements.").

[13] *See* Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, DA 14-1526, 6-7 (2014) (reversing RHCD funding denials and granting separate appeals by Yukon-Kushkokwin Health Corporation and Norton Sound Health Corporation who each sought to upgrade services mid-year pursuant to RHCD-approved evergreen contracts containing provisions allowing such upgrades).

[14] GCI reserves its right to seek an appropriate waiver from the Commission if that becomes necessary.

List of GCI Requests for Service Date Revisions **October 31, 2017**

HCP Name	HCP Number	FRN	SPIN	Type of Service	FCL Date	Service Start Date from FCL	Service End Date from FCL	Actual Service Start Date	Actual Service End Date	Funding Gap (Mos. and days)	Comments
Nightmute Clinic	10174	16911821	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/08/16	8/13/2016	12/13/2016	0.16129	
Nunapitchuk	10175	16913791	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/08/16	8/13/2016	12/15/2016	0.22581	
Pitkas Point Clinic	10178	16913961	143001199	1.544 Mbps MPLS	04/11/2017	08/13/16	12/01/16	8/13/2016	12/6/2016	0.16129	
Russian Mission Clinic	10181	16913991	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/01/16	8/13/2016	6/26/2017	6.83441	
John Afcan Memorial Clinic - St Marys	10182	16914051	143001199	10Mbps MPLS	04/11/2017	08/13/16	12/01/16	8/13/2016	6/30/2017	6.96774	
Scammon Bay Clinic	10183	16914081	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/08/16	8/13/2016	12/15/2016	0.22581	
Shageluk Clinic	10184	16914111	143001199	3 Mbps MPLS	04/11/2017	08/13/16	01/14/17	8/13/2016	6/26/2017	5.41506	Because of delays in the installation of new services, original services continued for longer than was anticipated. *GCI requested that these FRNs be modified to reflect correct in-service dates and funding amounts that correspond with the in-service dates.* Neither GCI nor HCPs appealed the original FRNs because, at the time they were issued, the parties were operating pursuant to an understanding, based on RHCD guidance and the experience of other GCI customers, that as long as the Form 467 had not been filed, it was still possible to revise in-service dates. In a September 21, 2017 call between the GCI RHC team and Karen Lee and the RHCD team, RHCD communicated its policy that FRN amounts could not be upwardly adjusted to reflect actual service periods, even if the Form 467 had not yet been filed.
Sleetmute Clinic	10186	16914131	143001199	1.544 Mbps Satellite	04/11/2017	08/13/16	12/08/16	8/13/2016	2/9/2017	2.06337	
Stony River Clinic	10187	16914141	143001199	1.544 Mbps Satellite	04/11/2017	08/13/16	12/08/16	8/13/2016	2/10/2017	2.09908	
Toksook Bay Clinic	10188	16914171	143001199	10 Mbps MPLS	04/11/2017	08/13/16	12/01/16	8/13/2016	6/26/2017	6.83441	
Kathleen Daniel Memorial Hospital - Tuntutuliak	10190	16914191	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/01/16	8/13/2016	1/10/2017	1.29032	
Crooked Creek Clinic	10192	16914151	143001199	1.544 Mbps Satellite	04/11/2017	08/13/16	12/08/16	8/13/2016	2/8/2017	2.02765	
Grayling Clinic	10195	16914211	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/08/16	8/13/2016	6/26/2017	6.60861	
Theresa Demientieff Health Clinic - Holy Cross	10196	16914221	143001199	1.544 Mbps MPLS	04/11/2017	08/13/16	01/14/17	8/13/2016	6/26/2017	5.41506	
Catherine Alexie Clinic - Upper kalsag	10199	16911811	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/08/16	8/13/2016	3/7/2017	2.96775	
Kotlik Clinic	10204	16914251	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/08/16	8/13/2016	2/7/2017	1.99194	
Kwigillingok Clinic	10206	16914271	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/08/16	8/13/2016	12/12/2016	0.12904	
Theresa Elia Memorial Clinic Marshall	10208	16914281	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/08/16	8/13/2016	12/13/2016	0.16129	
Mekoryuk Clinic	10209	16911791	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/01/16	8/13/2016	6/20/2017	6.63441	
Mountain Village Clinic	10210	16914291	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/08/16	8/13/2016	12/13/2016	0.16129	
Clara Morgan Sub-Regional Clinic - Aniak	10214	16914321	143001199	10 Mbps MPLS	04/11/2017	08/13/16	12/01/16	8/13/2016	12/5/2016	0.12903	
Anvik Clinic	10215	16914331	143001199	1.544 Mbps MPLS	04/11/2017	08/13/16	12/15/16	8/13/2016	6/26/2017	6.38280	
Chuathbaluk	10220	16914361	143001199	1.544 Mbps MPLS	04/11/2017	08/13/16	12/01/16	8/13/2016	6/21/2017	6.66774	
Bristol Bay Area Health Corporation dba Kanakanak Hospital	10992	16886241	143001199	3 Mbps Satellite	04/11/2017	07/01/16	9/30/16	7/01/2016	6/30/2017	8.97534	

List of GCI Requests for Service Date Revisions **October 31, 2017**

HCP Name	HCP Number	FRN	SPIN	Type of Service	FCL Date	Service Start Date from FCL	Service End Date from FCL	Actual Service Start Date	Actual Service End Date	Funding Gap (Mos. and days)	Comments
Tununak Clinic	10191	16911781	143001199	3 Mbps MPLS	04/11/2017	08/13/16	12/01/16	8/13/2016	12/11/2017	0.32258	RHCD indicated that in order to change the service dates RHCD needed to zero out the current FRNs, and replace them with "administrative" FRNs (Nos. 1628485 and 1628486). These administrative FRNs were apparently never established while the old FRNs (identified here) were zeroed out. *GCI requested that these FRNs be modified to reflect correct in-service dates and funding amounts that correspond with the in-service dates.*
Crimet Phillips, Sr. Clinic - Lower Kalskag	10198	16911711	143001199	3 Mbps MPLS	04/11/2017	08/13/16	01/14/17	8/13/2016	6/26/2017	5.41506	
Pearl E. Johnson/ Emmonak Subregional Clinic	10194	16868911	143001199	10 Mbps MPLS							The 10 Mbps FRN is currently in the portal. However, RHCD apparently withdrew the 15 Mbps FRN in error. *GCI requested that this be 15 Mbps FRN be reinstated with the correct in-service dates and funding amounts.*
Pearl E. Johnson/ Emmonak Subregional Clinic	10194	16914401	143001199	15 Mbps MPLS		07/01/16	08/12/16			1.38710	

[redacted]

From: Jeffrey Mitchell
Sent: Monday, October 31, 2016 11:16 AM
To: Nikoletta Theodoropoulos
Subject: Process question for "overlapping" RHC funding commitments

Follow Up Flag: Follow up
Flag Status: Flagged

Hey Nicole,
Very nice seeing you the other day. Hey, not sure who to talk to about this, but I work with GCI and they have an issue it might be helpful to have a call about.

Basically, there are situations where a customer that has existing service may get a funding committing for a new service that is not available yet – so there will be two funding commitments that are overlapping. Once the new service is provisioned, the customer stops invoicing on the old commitment, and starts invoicing under the new one – thus ensuring uninterrupted RHC subsidy.

With the funding close to the cap, this creates a situation where USAC is committing funding for a certain number of months that will never be used. So while this practice protects HCPs that are upgrading, it also ties up funding. So it's in everyone's interest to try to address this.

The problem for the service providers – particularly in Alaska – is that it is not always possible to know much in advance when new services will in fact be available. This can be due to everything from unpredictable weather to federal permitting delays (BLM, etc.).

GCI wants to work with USAC to minimize unused funding commitments but they are in a difficult position because they don't want to put a customer in a position where GCI provides an "end date" for the old service and the customer gets cut off from funding when the new service is delayed by a month or more.

Let me know if this is something USAC would like to discuss or who I should approach about this.

Best,
Jeff

Jeffrey A. Mitchell
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive
Suite 1200
McLean, VA 22102
[redacted]

[redacted]

From: Carolyn McCornac [redacted]
Sent: Friday, November 04, 2016 2:42 PM
To: Jeffrey Mitchell
Cc: Nikoletta Theodoropoulos
Subject: FW: Process question for "overlapping" RHC funding commitments

Hi Jeff,

Nicole forwarded your message to me. I'm the manager for the funding request and commitments. You can direct these kinds of questions to me, if you prefer.

I'm familiar with the scenario you present. For the record, RHC does not provide, "funding commitments that are overlapping…" *Overlapping* implies duplicate funding; and that is not allowed in any of the RHC programs. Further, RHC does not, "[commit] funding for a certain number of months that will never be used…" RHC relies on the signed and certified information provided by the HCPs on the forms to commit funding exclusively for the duration of the eligible service. It is the responsibility of the program participants to contact RHC regarding changes in dates of service.

To the extent that a form reviewer can work with a program participant to help manage the timing of funding, we are happy to do so. However, we cannot provide concurrent funding for the same circuit. That is a violation of program rules.

Practically speaking, as long as the HCP does not submit the Form 467, service start and end dates could be modified on an FCL (in most cases). To that end, if an HCP plans to upgrade service in January, and there is an FCL for the original service for July through Dec, and one FCL for the upgraded service for Jan – June, as long as the Form 467 hasn't been submitted for either of those FCLs, the dates for both FCLs could be adjusted to match the dates of the service change (in most cases).

I hope this helps. Please feel free to contact me if you have additional questions.

Thanks,
Carolyn
[redacted]

From: Nikoletta Theodoropoulos
Sent: Friday, November 04, 2016 12:22 PM
To: Carolyn McCornac [redacted]
Subject: FW: Process question for "overlapping" RHC funding commitments

-----Original Message-----
From: Jeffrey Mitchell [redacted]
Sent: Friday, November 04, 2016 12:13 PM Eastern Standard Time
To: Nikoletta Theodoropoulos
Subject: RE: Process question for "overlapping" RHC funding commitments

Nicole – following up with you on email below. This is actually a time sensitive issue -- hoping you can provide some direction for me.
Thanks,
Jeff

Jeff Mitchell
[redacted]

From: Jeffrey Mitchell
Sent: Monday, October 31, 2016 11:16 AM
To: Nikoletta Theodoropoulos [redacted]
Subject: Process question for "overlapping" RHC funding commitments

Hey Nicole,
Very nice seeing you the other day. Hey, not sure who to talk to about this, but I work with GCI and they have an issue it might be helpful to have a call about.

Basically, there are situations where a customer that has existing service may get a funding committing for a new service that is not available yet – so there will be two funding commitments that are overlapping. Once the new service is provisioned, the customer stops invoicing on the old commitment, and starts invoicing under the new one – thus ensuring uninterrupted RHC subsidy.

With the funding close to the cap, this creates a situation where USAC is committing funding for a certain number of months that will never be used. So while this practice protects HCPs that are upgrading, it also ties up funding. So it's in everyone's interest to try to address this.

The problem for the service providers – particularly in Alaska – is that it is not always possible to know much in advance when new services will in fact be available. This can be due to everything from unpredictable weather to federal permitting delays (BLM, etc.).

GCI wants to work with USAC to minimize unused funding commitments but they are in a difficult position because they don't want to put a customer in a position where GCI provides an "end date" for the old service and the customer gets cut off from funding when the new service is delayed by a month or more.

Let me know if this is something USAC would like to discuss or who I should approach about this.

Best,
Jeff

Jeffrey A. Mitchell
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive
Suite 1200
McLean, VA 22102
[redacted]

From:	Bernie Manns
To:	Jennifer Bachman; RHC-Assist
Cc:	Robert Taylor; Joe Furrer; Ariel Burr; Johanna Darrough
Subject:	RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624
Date:	Thursday, October 20, 2016 10:56:40 AM
Attachments:	image001.png

[External Email]

Yes, it will be adjusted to 9/30/16 to correspond with the anticipated install date of 10/1/16 of the 30M service on FRN 1690396. Once again the commitments are not finalized until the FCC Form 467 is received from the HCP and the HSS is produced.

Regards,

Bernie Manns
Senior Program Analyst ¦ Rural Health Care
USAC
[redacted]
[redacted] ¦ www.usac.org

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From: Jennifer Bachman [redacted]
Sent: Thursday, October 20, 2016 12:22 PM
To: Bernie Manns; RHC-Assist
Cc: Robert Taylor; Joe Furrer; Ariel Burr; Johanna Darrough
Subject: FW: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

Bernie,

Will the end date be adjusted for FRN 1688624?

Thank you,

Jennifer Bachman
USF Account Administrator
[redacted]

support program instructions available to the addressee.

From: Jennifer Bachman
Sent: Wednesday, October 19, 2016 11:42 AM
To: Bernie Manns; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

Okay I understand trying to budget the numbers. I just want to make sure that if services for the for 3 Mbps FRN 1688624, do not end until for example 11/1/2016 and the new service for 30 Mbps starts on 11/2/2016, but the 466 for FRN 1688624 shows funding end date if 09/30/2016 will this be adjusted on the 467? I think we are just worried about an end date of 9/30/2016 when the services for the 3 Mbps are still in service.

Thank you,

Jennifer Bachman
USF Account Administrator
[redacted]

From: Bernie Manns [redacted]
Sent: Wednesday, October 19, 2016 11:26 AM
To: Jennifer Bachman; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

[External Email]

No, the old service would need to end the day prior to the anticipated start of the new service. This is to mitigate the illusion of duplicate funding as it relates to being able to track our progress towards the $400 million cap. In the scenario you described below the old service and new service would both be counting against the estimated cap for the period of 10/1/16 – 6/30/17. No funding commitment is finalized without the agreement by the submitter, via their 467.

Regards,

Bernie Manns
Senior Program Analyst ¦ Rural Health Care
USAC

[redacted]
[redacted] | www.usac.org

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From: Jennifer Bachman [redacted]
Sent: Wednesday, October 19, 2016 3:18 PM
To: Bernie Manns; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

So to be clear, ends dates for the old service remain at 06/30/2017 and the new service anticipated installation date remain at 10/1/2016, and the clinic should not complete 467s until both dates are firm.

Thank you,

Jennifer Bachman
USF Account Administrator
[redacted]
[redacted]

From: Bernie Manns [redacted]
Sent: Wednesday, October 19, 2016 11:09 AM
To: Jennifer Bachman; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

[External Email]

Jennifer,

As long as the Form 467 is not submitted we can pull the form back into review and alter the funding period, once the firm dates are established.

Regards,

Bernie Manns

Senior Program Analyst ¦ Rural Health Care
USAC
[redacted]
[redacted] ¦ www.usac.org

This message is for information purposes only, and is neither a guarantee nor commitment for eligibility or funding in any of the Rural Health Care programs.

From: Jennifer Bachman [redacted]
Sent: Wednesday, October 19, 2016 2:35 PM
To: Bernie Manns; RHC-Assist
Cc: Johanna Darrough; Joe Furrer; Robert Taylor; Ariel Burr
Subject: RE: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624
Importance: High

Hi Bernie,

Could you help us with this. To agree to an end date of 9/30/2016 for FRN 1688624 when the we do not have a firm installation date for FRN 1690396, will we not be losing funding? Or can the end date on 1688624 be change on the 467 just like the installation date on upgrade be changed?

How do we assure there is funding for the 3 Mbps is available until the upgrade is installed?

Thank you,

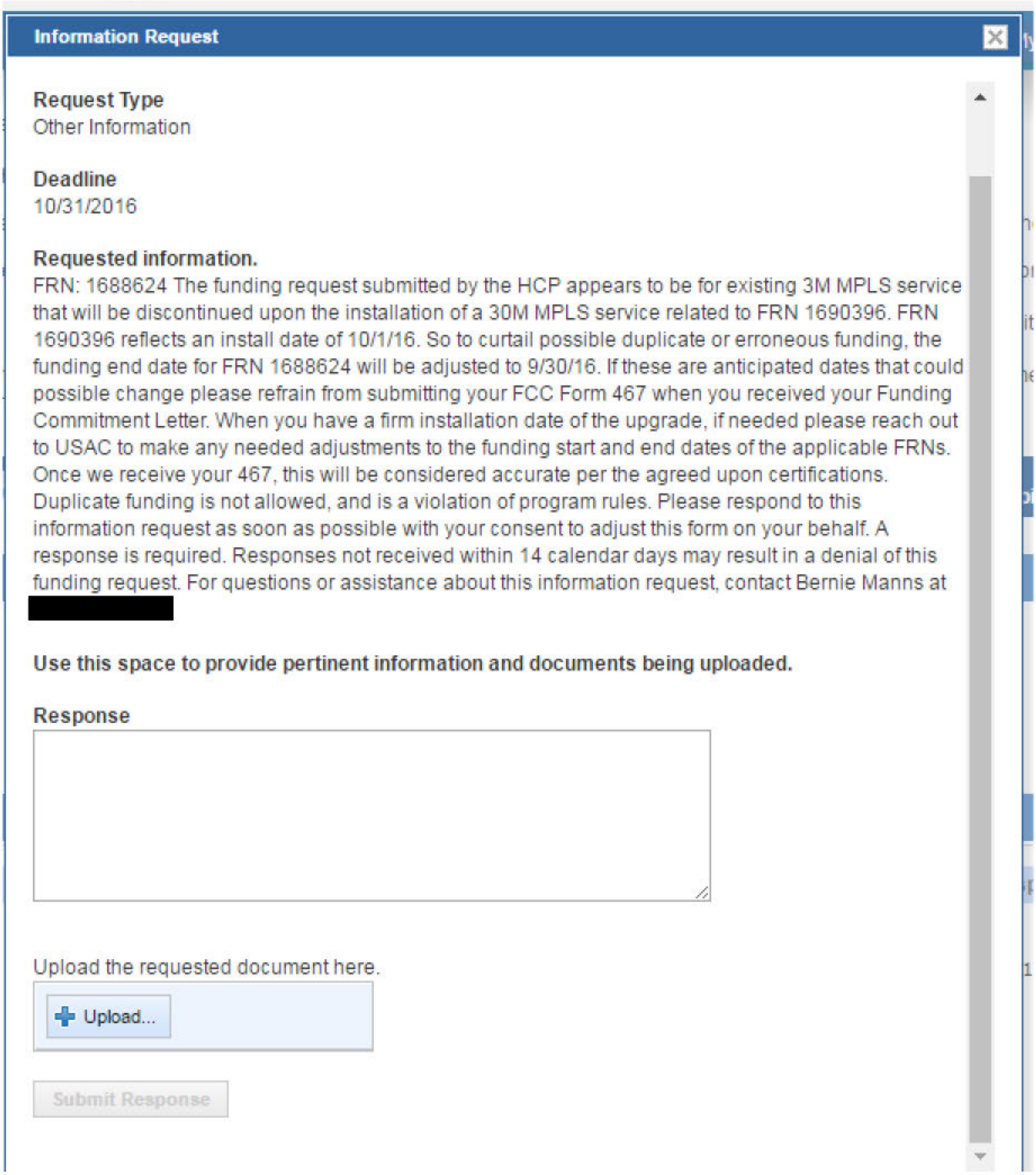
Jennifer Bachman
USF Account Administrator
[redacted]

From: Johanna Darrough [redacted]
Sent: Wednesday, October 19, 2016 9:57 AM
To: Ariel Burr; Jennifer Bachman
Cc: Joe Furrer
Subject: FW: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624
Importance: High

[External Email]

FYI: new request type.

Based on the spreadsheet that was filled out with stop/start dates for funding requests in Funding Year 2016 – this is now a new request.



Information Request

Request Type
Other Information

Deadline
10/31/2016

Requested information.
FRN: 1688624 The funding request submitted by the HCP appears to be for existing 3M MPLS service that will be discontinued upon the installation of a 30M MPLS service related to FRN 1690396. FRN 1690396 reflects an install date of 10/1/16. So to curtail possible duplicate or erroneous funding, the funding end date for FRN 1688624 will be adjusted to 9/30/16. If these are anticipated dates that could possible change please refrain from submitting your FCC Form 467 when you received your Funding Commitment Letter. When you have a firm installation date of the upgrade, if needed please reach out to USAC to make any needed adjustments to the funding start and end dates of the applicable FRNs. Once we receive your 467, this will be considered accurate per the agreed upon certifications. Duplicate funding is not allowed, and is a violation of program rules. Please respond to this information request as soon as possible with your consent to adjust this form on your behalf. A response is required. Responses not received within 14 calendar days may result in a denial of this funding request. For questions or assistance about this information request, contact Bernie Manns at [redacted]

Use this space to provide pertinent information and documents being uploaded.

Response

Upload the requested document here.

Upload...

Submit Response

So, I think I would respond that I am in agreement to change the end date of 1688624 to 9/30/16. However, the installation date for the 30 MBs was 10/1/2016 and we are now at 10/19/2016. I think I should still agree to their request and then as mentioned wait to file any 467s, etc…

From: rhc-assist@usac.org [mailto:rhc-assist@usac.org]
Sent: Monday, October 17, 2016 10:40 AM
To: Johanna Darrough
Subject: Action Required - RHC Telecommunications Program - Submit Requested Information - FCC Form 466 HCP # 10992, FRN 1688624

Date: 17-Oct-2016

HCP Number:	10992
FCC Form 465 Application Number:	43162397
Funding Request Number (FRN):	1688624
Service Type:	Satellite Service
Funding Year:	2016

The Rural Health Care (RHC) division of the Universal Service Administrative Company (USAC) has received the FCC Form 466 submitted by the HCP referenced above. However, RHC cannot process the form without information for FRN 1688624. To view and respond to the request for information, log into My Portal at https://rhc.usac.org/rhc/, go to Information Requested on the My Documents tab, and click on the "Request Type" hyperlink. Click on "Submit Response" to submit the information requested. Any account holder will be able to respond to an Information Request; once it has been completed, the request is removed from the Information Requests section and the information provided will be saved to your My Documents folder.

The information requested is required to process the above referenced form, and must be submitted to RHC by the deadline. Failure to respond to the email may impact funding.

Do not reply to this email - RHC does not monitor this account. For questions or assistance about the information request, contact the RHC Help Desk at 800-453-1546 or click on the "Contact RHC Help Desk" link in My Portal.

The information contained in this electronic communication and any attachments and links to websites are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering this communication to the intended recipient, be advised you have received this communication in error and that any use, dissemination, forwarding, printing or copying is strictly prohibited. Please notify the sender immediately and destroy all copies of this communication and any attachments.

The information contained in this electronic communication and any attachments and links to

[redacted]

From: Bernie Manns [redacted]
Sent: Thursday, January 12, 2017 7:23 AM
To: Ariel Burr; Christina Hensley
Cc: Jennifer Bachman; Joe Furrer; Robert Taylor; RHC-Assist; Chad Sheldon
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

[External Email]

Ariel,

FRNs 1689896, 1689903, and 1689900 – The funding start date for these FRNs will be adjusted to reflect the anticipated install dates you provided in your response. The corresponding forms for the existing service will have the funding end date adjusted to end prior to the start of these upgrade forms. If the HCP disagrees with the granted commitment amount or time periods they will have the option to appeal for adjustments once they receive their FCLs.

Regards,

Bernie Manns
Senior Program Analyst | Rural Health Care
USAC
[redacted] | www.usac.org

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From: Ariel Burr [redacted]
Sent: Wednesday, January 11, 2017 2:15 PM
To: Bernie Manns; Christina Hensley
Cc: Jennifer Bachman; Joe Furrer; Robert Taylor; RHC-Assist; Chad Sheldon
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

Hi Bernie,

Answers below in red. Please let me know if you need anything else. Thank you for your patience and cooperation as we work through these applications.

Thank you,
Ariel

From: Bernie Manns [redacted]
Sent: Wednesday, January 11, 2017 6:46 AM
To: Ariel Burr; Christina Hensley
Cc: Jennifer Bachman; Joe Furrer; Robert Taylor; RHC-Assist; Chad Sheldon
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

[External Email]

Ariel,

Sorry this kind of feel off of my radar with the push towards completing forms review. Just wanted to revisit this to confirm action to be taken. Please correct me if I'm off base on any of these.

FRNs 1689890 and 1689897 – Can be withdrawn due to the services will not be installed during FY16. The 467s for FRNs 1687108 and 1687159 can be approved for the entire funding year due to these two FRNs being withdrawn. Yes, this is correct except I think there was a typo in one of the FRNs, should be 16871081.

FRNs 1689896, 1689903, and 1689900 – Do you have install dates for these sites? We still need to coordinate the funding start dates with the funding end dates for the associated FRNs (1687132, 1687163, and 1687160) so as we are not reporting erroneous periods of duplicate funding. I think this is the crux of the issue. We are not trying to double dip on funding. But, we can't provide a hard and firm installation date. Logistics and weather in rural Alaska can be extremely challenging. I have been given updated installation date estimates, but they are still only estimates. It is very likely that these dates could slip a few weeks. If that happens, can we reach back out to USAC to adjust the FCL dates on all 6 commitments?

Buckland 2/10
Selawik 2/13
Noorvik 2/16

On these sites are these services replacing the existing (like a hot cut) or are new circuit facilities being installed where they will possibly have two circuits running while the new service is groomed in? Yes, the new service will replace the old and it will be a hot cut.

Regards,

Bernie Manns
Senior Program Analyst | Rural Health Care
USAC
[redacted] | www.usac.org

From: Ariel Burr [redacted]
Sent: Wednesday, November 30, 2016 2:43 PM
To: Christina Hensley; Bernie Manns
Cc: Jennifer Bachman; Joe Furrer; Robert Taylor; RHC-Assist; Chad Sheldon
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

Hello,

Sorry I just want to clarify. We don't need to do anything with the 466s for the new services. They can stay as is.

- Buckland – FRN 1689896
- Noorvik – FRN 1689900
- Selawik – FRN 1689903

We can withdraw the 467s that were filed for

- Buckland – FRN 16871321
- Noorvik – FRN 16871601
- Selawik – FRN 16871631

And then resubmit the 467s once the installation dates are known.

Then withdraw/cancel the 466s for Noatak (FRN 1689897) and Kiana (FRN 1689890) because they will not be installed this funding year. So the old services for Noatak (FRN 16871591) and Kiana (FRN 16871081) will continue through 06/30/2017.

Thanks,
Ariel

From: Christina Hensley [redacted]
Sent: Wednesday, November 30, 2016 10:12 AM
To: Bernie Manns
Cc: Jennifer Bachman; Joe Furrer; Robert Taylor; RHC-Assist; Ariel Burr; Chad Sheldon
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

[External Email]

Hello Bernie,

I understand that this is the most busiest time for you, and really don't want to be a troublesome. I really just wanted to make sure we're all on the same page and reiterate the plans (mostly for my comfort).

If I were to cancel the 466 for the following:

- Buckland – FRN 1689896
- Noorvik – FRN 1689900
- Selawik – FRN 1689903

Will we be able to withdraw the 467s for the following:

- Buckland – FRN 16871321
- Noorvik – FRN 16871601
- Selawik – FRN 16871631

And, confirm to withdraw/cancel the 466s for Noatak (FRN 1689897) and Kiana (FRN 1689890) because they will not be installed this funding year. So the old services for Noatak (FRN 16871591) and Kiana (FRN 16871081) will continue through 06/30/2017.

Thank you kindly,

Christina Hensley

From: Ariel Burr [redacted]
Sent: Monday, November 28, 2016 12:50 PM
To: Bernie Manns [redacted]
Cc: Christina Hensley [redacted]; Jennifer Bachman [redacted]; Joe Furrer [redacted] Robert Taylor [redacted]; rhc-assist@usac.org
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

Hi Bernie,

Sorry I need to correct the three FRNs below for Buckland, Noorvik, and Selawik. We should be withdrawing (not canceling) the support schedules for the OLD services:

- Buckland – FRN 16871321
- Noorvik – FRN 16871601
- Selawik – FRN 16871631

Thanks for your help,
Ariel

From: Ariel Burr
Sent: Monday, November 28, 2016 11:23 AM
To: Bernie Manns [redacted]
Cc: Christina Hensley [redacted]; Jennifer Bachman; Joe Furrer; Robert Taylor; rhc-assist@usac.org
Subject: FW: Support Schedule HCP 10249 FRN 16871081 Kiana

Hi Bernie,

Correct me if I'm wrong. Here is what I understand from your attached email.

If Maniilaq were to withdraw the 467s (not cancel the application, just withdraw the support schedule for now) for the following three HCPs:

- Buckland – FRN 1689896
- Noorvik – FRN 1689900
- Selawik – FRN 1689903

Once the installation dates for the new service are known, then the HCP can re-file the 467s for the above FRNs, reducing the overall amount of committed funds for the old service. Yes?

And, confirm to withdraw/cancel the 466s for Noatak (FRN 1689897) and Kiana (FRN 1689890) because they will not be installed this funding year. So the old services for Noatak (FRN 16871591) and Kiana (FRN 16871081) will continue through 06/30/2017.

Will this work?

Thank you,

Ariel Burr
Universal Service Fund Manager
Managed Broadband Services
2550 Denali St. Ste #600
Anchorage, AK 99503

[redacted]

From: Christina Hensley [redacted]
Sent: Monday, November 28, 2016 10:50 AM
To: Bernie Manns; Joe Furrer; Ariel Burr; RHC-Assist

Cc: Jennifer Bachman; Robert Taylor
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

[External Email]

Hello Bernie,

I have a question. Can we withdraw all the upgraded FRNs, keep the original submissions up to the point of holding off the FCL dates until those dates are known?

Quyaanna (Thank you),

Christina Hensley

From: Bernie Manns [redacted]
Sent: Monday, November 28, 2016 10:24 AM
To: 'Joe Furrer' [redacted]; Ariel Burr [redacted]; RHC-Assist <rhc-assist@usac.org>
Cc: Jennifer Bachman [redacted]; Robert Taylor [redacted]; Christina Hensley [redacted]
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

Joe,

It the HCP withdraws the 467s then they would be in essence cancelling the commitment request if I'm understanding your use of the term "withdraws". In this case they would need to re-submit FRNs if they are looking to replace the withdrawn forms.

Regards,

Bernie Manns
Senior Program Analyst | Rural Health Care
USAC
[redacted] | www.usac.org

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From: Joe Furrer [redacted]
Sent: Wednesday, November 16, 2016 5:34 PM
To: Ariel Burr; Bernie Manns; RHC-Assist
Cc: Jennifer Bachman; Robert Taylor; Christina Hensley [redacted]
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

Bernie,

If the HCP withdraws the 467s addressed in this email string, then will they be able to edit the funding dates on the FCL as services are brought online?

v/r,

Joe

Joe Furrer
Director, GCI Healthcare
[redacted]

From: Ariel Burr
Sent: Wednesday, November 16, 2016 8:43 AM
To: Bernie Manns [redacted]; RHC-Assist <rhc-assist@usac.org>
Cc: Joe Furrer [redacted]; Jennifer Bachman [redacted]; Robert Taylor [redacted]; Christina Hensley [redacted]
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

What about these FRNs that have already had the 467 filed. Are they set in stone, or can you revise the dates on the FCL?

If the dates on the FCL cannot be revised, then I would suggest the HCP file new 466s, and then not file 467s so that the funding dates can be adjusted.

Thank you,
Ariel

From: Bernie Manns [redacted]
Sent: Wednesday, November 16, 2016 5:09 AM
To: Ariel Burr; RHC-Assist
Cc: Joe Furrer; Jennifer Bachman; Robert Taylor; Christina Hensley [redacted]
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

[External Email]

Honestly it's at the HCP's discretion to decide their most prudent course of action. We will process any forms received accordingly, so they should not factor USAC's level of effort in their decision making. Our task focuses on maximizing funding for all submitted participants by minimizing any possible duplication of estimated funding commitments. Probably the only other point of consideration I can add is if they do decide to withdraw the initial forms and re-submit new forms, the new forms will be reviewed under the same parameters of any other forms received during the current window. Thus, if the cap is hit during this current window these forms will be pro-rated along with all other forms submitted during this window. I apologize for not have any more specific course of action but we caution on unintentionally influencing the HCPs decision one way or the other.

Regards,

Bernie Manns
Senior Program Analyst | Rural Health Care
USAC
[redacted] | www.usac.org

From: Ariel Burr [redacted]
Sent: Tuesday, November 15, 2016 6:04 PM
To: Bernie Manns; RHC-Assist
Cc: Joe Furrer; Jennifer Bachman; Robert Taylor; Christina Hensley [redacted]
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

Hi Bernie,

We are trying to create the least amount of work for USAC as possible.

The HCP has very little control over the expected installation dates. We are working on a project to build out fiber/microwave services to five HCPs in the Kotzebue region, which is located above the arctic circle. As you can imagine, there is a significant amount of logistics required to complete this type of project. While we've estimated 1/1/2017 as the estimated installation date, the truth is that date will probably change again.

We thought once the 467 was submitted, USAC was not able to adjust the dates, it was set in stone. So we were wondering if the HCP needs to withdraw, re-submit new 466s, and not file 467s, so the dates can be edited once they are firm?

We really appreciate your help and patience with us.

Thank you,

Ariel Burr
Universal Service Fund Manager
Managed Broadband Services
2550 Denali St. Ste #600
Anchorage, AK 99503

[redacted]

From: Bernie Manns [redacted]
Sent: Tuesday, November 15, 2016 5:30 AM
To: Jennifer Bachman; RHC-Assist; Christina Hensley
Cc: Ariel Burr; Joe Furrer
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

[External Email]

Jennifer,

RHC Commitments Team cannot dictate the decision status or actions taken on FRNs. The HCP will have to weigh out the options that would best fit their situation while operating within the program rules of not representing duplicate funding in relation to upgraded circuits. At this point it would probably be most prudent to attempt to work directly with the HCP to figure out the most accurate anticipated installation dates and then pass this information on to us to update the FRNs involved accordingly.

Regards,

Bernie Manns
Senior Program Analyst | Rural Health Care
USAC
[redacted] | www.usac.org

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From: Jennifer Bachman [redacted]
Sent: Friday, November 11, 2016 6:03 PM
To: Bernie Manns; RHC-Assist; Christina Hensley
Cc: Ariel Burr; Joe Furrer
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

Thank you Bernie for your assistance. I have a few questions.

1. Should the HCP withdraw the 467s for (1687108, 1687132, 1687163, 1687160, 1687159) and complete new 466s with the end date of 12/31/2016 and then not complete 467s until the upgraded FRNs (1689890, 1689896, 1689903, 1689900, 1689897) are installed.
2. Or can the 467's be changed to end on 12/31/2016, but not use the 467, and wait to certify them when the upgrades are complete?

Please let us know.

Jennifer Bachman
USF Account Administrator
[redacted]

From: Bernie Manns [redacted]
Sent: Monday, October 31, 2016 12:24 PM
To: Jennifer Bachman; RHC-Assist; Christina Hensley
Cc: Ariel Burr; Joe Furrer
Subject: RE: Support Schedule HCP 10249 FRN 16871081 Kiana

[External Email]

Jennifer,

The 467's for FRNs (1687108, 1687132, 1687163, 1687160, 1687159) related to Maniilaq Association were pulled back to adjust the funding end dates to 12/31/2016 due to new FRNs submitted during the current window that are for upgrades with an install date of 1/1/2017 for FRNs (1689890, 1689896, 1689903, 1689900, 1689897).

Due to the new submission windows we have to monitor and pro-actively adjust any situations that may present duplicate committed funds as in this situation. The original forms were committed for 7/1/16 – 6/30/17 and the upgrades are in review and request funding from 1/1/17 – 6/30/17.

I've included the HCP contact on this email so they are also aware of what is going on with these FRNs. If you have a different installation date for the upgraded forms then we can adjust for this but if the date is expected to stay at 1/1/17 then these original forms will have their funding end dates adjusted to 12/31/16 via the 467 revision. Please advise on the installation date of the upgrades, as the original forms will be pending 467 revision until we have an update and will not be accessible for invoicing until processed.

Regards,

Bernie Manns
Senior Program Analyst | Rural Health Care
USAC
[redacted] | www.usac.org

From: Jennifer Bachman [redacted]
Sent: Monday, October 31, 2016 12:51 PM
To: Bernie Manns; RHC-Assist
Cc: Ariel Burr; Joe Furrer
Subject: Support Schedule HCP 10249 FRN 16871081 Kiana

Hello,

We have a support schedule for HCP 10249 FRN 16871081 Kiana Maniilaq Association but funding is not available for invoicing. Please assist.

Thank you,

Jennifer Bachman
USF Account Administrator
[redacted]

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LLGS | LUKAS LAFURIA GUTIERREZ & SACHS LLP

August 25, 2017

Karen Lee, Vice President
Rural Health Care Division
Universal Service Administrative Co.
700 12th Street, NW, Suite 900
Washington, DC 20005

RE: General Communication Inc.
Election to Participate in FCC Remote Alaskan HCP Waiver

Dear Ms. Lee:

On behalf of General Communication, Inc. (GCI), we are formally notifying USAC's Rural Health Care Division (RHCD) of GCI's election to offer reduced funding year (FY) 2016 pricing[1] to several of our Rural Health Care (RHC) program customers. While GCI has elected to offer reduced FY 2016 pricing for all of its remote Alaska health care providers (HCPs), we are formally notifying RHCD of two instances where the final price reduction amount remains contingent upon actions yet to be taken by RHCD. In one case there is an RHCD appeal decision pending for Maniilaq Association (HCP Nos. 10812, 10817, and 10919) (Maniilaq), and in another case there is a pending request to make service end-date changes to a Form 467 for Yukon Kuskokwim Health Corporation (HCP Nos. 10191 and 10198) (YKHC). Maniilaq filed its appeal June 9, 2017, while GCI requested modification of the YKHC Form 467 on August 21, 2017 (after YKHC had been unable to make the change in the portal).

Our request is (1) that RHCD act in connection with these two HCPs prior to the September 28 waiver deadline so GCI will have time to finalize appropriate reduced pricing for these HCPs, or (2) in the event RHCD is unable to act on these requests prior to September 28, that RHCD provide assurance to GCI that by submitting this notification GCI has timely elected to participate in the pricing waiver for these HCPs,[2] and that RHCD can still process FY 2016 pricing reductions after September 28, 2017. If USAC is unable to do #1 or #2 above, we ask

[1] *See Rural Health Care Support Mechanism*, Order, FCC 17-84, WC Docket No. 02-60, ¶ 6 (rel. Jun. 30, 2017) ("2017 Waiver Order") ("We waive our rules to the extent described herein to create a path for HCPs located in remote Alaska to benefit from any voluntary price reduction(s) that their service providers elect to undertake for services rendered based on qualifying funding requests submitted during the second filing window period for the 2016 funding year.").

[2] *Id.* at n.8 ("Parties shall have 90 days to take advantage of the relief provided herein.").

that you notify us promptly so that we may explore whether to seek relief from the Wireline Bureau (such as a waiver deadline extension).

Sincerely,

Jeffrey A. Mitchell
Counsel for General Communication, Inc.

cc: Radhika Karmarkar, Esq., FCC
Johnnay Schreiber, Esq., USAC

Exhibit 4

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October 25, 2017

Karen Lee, Vice President
Rural Health Care Division
Universal Service Administrative Co.
700 12th Street, NW, Suite 900
Washington, DC 20005

RE: General Communication Inc.
Request for Administrative Action: Mid-Funding Year Service Changes

Dear Ms. Lee:

On behalf of General Communication, Inc. (GCI), we request the Rural Health Care Division's (RHCD) assistance in avoiding unnecessary gaps in funding for health care providers that change services during the course of a Rural Health Care (RHC) program funding year. This is a vitally important issue in Alaska where extremely remote, impoverished communities need access to specialty medical care, and where climate and weather conditions make installation of new services both costly and unpredictable. Mid-year service changes are permitted under program rules and, until funding year (FY) 2016, RHCD handled these so as not to cause gaps in funding for applicants.[1]

Unfortunately, in FY 2016, RHCD processes effectively penalized GCI customers that made mid-year service changes. This occurred despite GCI communicating the issue to RHCD in October 2016, well in advance of RHCD issuing the final round of FY 2016 commitments in early 2017, and despite RHCD staff providing assurances that a process existed to facilitate these service changes. As you know, RHCD recently clarified that it would not process changes to funding commitments to reflect the actual number of months that services were in-use, and that the only recourse to recover resulting losses in funding is to appeal the matter.

While this letter does not constitute such an appeal, because the underlying issue will recur in FY 2017 and future years, we again ask RHCD to consider process changes that will allow health care providers to obtain the telecommunications services they require without unnecessarily risking gaps in funding. Solving this problem will avoid further appeals and, as we explain below, ensure maximum RHC funding is available for commitment to applicants each funding cycle.

[1] This issue is separate from the loss of funding due to the FY 2016 *pro-rata* cap reductions.

Background

The FCC has long-recognized that applicants may modify or upgrade services within a contract during the course of a funding year.[2] Alternatively, an applicant may obtain services under an old contract for part of the funding year and, after new services are installed, may switch to obtaining services under a new agreement for the remainder of the funding year. (We are addressing cases where both the contracts have been competitively bid and approved by RHCD as part of the funding commitment process.) Whether service changes are within a single contract, or between adjacent contracts, the issue we are highlighting is practical and purely administrative: when do the old services end, and the new services begin?

Prior to FY 2016, applicants obtained funding commitments pursuant to two contracts by providing tentative service start/end dates reflecting when the new services would be available. To address the uncertainty, the two separate funding commitments might overlap – that is, the old service might be funded beyond the estimated start date for the new service, to provide a buffer in case installation of the new service was delayed. For FY 2016, after the FCC established RHC filing windows, RHCD sought to eliminate such overlaps, forcing applicants to choose non-overlapping service start and end dates despite the fact that these dates were inherently uncertain.

That was the situation when GCI sought guidance via an October 2016 email to RHCD staff. As GCI explained:

> [T]here are situations where a customer that has existing service may get a funding committing for a new service that is not available yet – so there will be two funding commitments that are overlapping. Once the new service is provisioned, the customer stops invoicing on the old commitment, and starts invoicing under the new one – thus ensuring uninterrupted RHC subsidy.
>
> With [RHC] funding close to the cap, this creates a situation where USAC is committing funding for a certain number of months that will never be used. So while this practice protects HCPs that are upgrading, it also ties up funding. So it's in everyone's interest to try to address this.
>
> The problem for the service providers – particularly in Alaska – is that it is not always possible to know much in advance when new services will

[2] *See* Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, Fourth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 5318, 5425-5426, ¶¶ 227-29 (1997) (adopting "cardinal change" standard for evaluating whether to allow mid-contract service modifications); *Rural Health Care Mechanism*, WC Docket No. 02-60, ¶ 263 (2012) (extending existing cardinal change rule to Healthcare Connect Fund).

> in fact be available. This can be due to everything from unpredictable weather to federal permitting delays ([Bureau of Land Management], etc.).
>
> GCI wants to work with USAC to minimize unused funding commitments but they are in a difficult position because they don't want to put a customer in a position where GCI provides an "end date" for the old service and the customer gets cut off from funding when the new service is delayed by a month or more.[3]

On November 8, 2016, RHCD responded with the following guidance:

> Practically speaking, as long as the HCP does not submit the Form 467, service start and end dates could be modified on an [Funding Commitment Letter (FCL)] (in most cases). To that end, if an HCP plans to upgrade service in January, and there is an FCL for the original service for July through Dec, and one FCL for the upgraded service for Jan – June, as long as the Form 467 hasn't been submitted for either of those FCLs, the dates for both FCLs could be adjusted to match the dates of the service change (in most cases).[4]

Over the course of FY 2016, RHCD staff provided similar guidance to GCI and its customers,[5] and GCI and its customers understood that this process would protect them from gaps in funding. GCI learned only recently that RHCD will adjust *service dates* to reflect actual service periods, but will not make corresponding adjustments to the *funding amount* for each affected FCL. This decision will cause substantial losses for our customers who will not receive funding for eligible services provided by GCI pursuant to RHCD-approved contracts. <u>These losses are in addition to the *pro rata* reductions associated with operation of the funding cap in FY 2016</u>.

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[3] *See* email from Jeffrey Mitchell, Lukas LaFuria Gutierrez & Sachs LLP (LLGS), to Nikoletta Theodoropoulos, Director, RHCD (Oct. 31, 2016).

[4] *See* email from Caroline McCornac, RHCD, to Jeffrey Mitchell, LLGS, copy to Nikoletta Theodoropoulos, Director, RHCD (Nov. 8, 2016). While it was not entirely clear RHCD understood GCI's concern about health care providers potentially losing funding in these "gaps", in a GCI-requested follow-up call the next day, RHCD staff informed GCI (paraphrasing): "USAC no longer has the resources to babysit these funding requests."

[5] *See, e.g.,* email from Bernie Manns, RHCD, to Jennifer Bachman, GCI (Oct. 20, 2016) (responding to question about whether the end-date for Bristol Bay Area Health Corporation FRN 1688624 would be adjusted, Mr. Manns stated: "Yes, it will be adjusted to 9/30/16 to correspond with the anticipated install date of 10/1/16 of the 30M service on FRN 1690396. *Once again the commitments are not finalized until the FCC Form 467 is received from the HCP and the [service support schedule] is produced*.") (emphasis added); email from Bernie Manns, RHCD, to Ariel Burr, GCI, and Christina Hensley, Maniilaq Association (Jan. 1, 2017) ("FRNs 1689896, 1689903, and 1689900 – The funding start date for these FRNs will be adjusted to reflect the anticipated install dates you provided in your response. The corresponding forms for the existing service will have the funding end date adjusted to end prior to the start of these upgrade forms.").

The following table contains a simplified illustration of how this funding gap can occur:

	Monthly Recurring Subsidy	Estimated Start Date	Estimated End Date	Estimated Service Periods	Initial FCL Amount
Service #1	$1000	07/01/2016	12/31/2016	6 months	$6,000
Service #2	$2000	01/01/2017	06/30/2017	6 months	$12,000
			Totals	**12 months**	**$18,000**
	Monthly Recurring Subsidy	**Actual Start Date**	**Actual End Date**	**Actual Service Periods**	**Actual Subsidy Needed**
Service #1	$1000	07/01/2016	02/28/2017	8 months	$8,000
Service #2	$2000	03/01/2017	06/30/2017	4 months	$8,000
			Totals	**12 months**	**$16,000**
				Months Funded	**Actual Subsidy Awarded**
Service #1	*$6,000 committed; $8,000 utilized; commitment capped at $6000; loss of two months' subsidy (gap)*			6 months	$6,000
Service #2	*$12,000 committed; $8,000 utilized; $4,000 not utilized*			4 months	$8,000
				Totals	**10 months**	**$14,000**
					Loss to HCP	**$2,000**
					Committed but Unused Funds	**$4,000**

We emphasize that, in part due to the unique conditions in Alaska, service dates and service periods cannot be known at the time these funding applications are submitted, reviewed, and approved by RHCD. Therefore, all parties can expect this issue to recur in FY 2017 and beyond.

Request for USAC Administrative Action

GCI does not believe it is reasonable for RHCD to expect applicants to forego needed service changes, or to proceed with those changes at-risk for installation delays. Accordingly, we renew our request for RHCD to implement an administrative solution to this problem. If RHCD fails to act, it will not only cause unnecessary appeals and hardship for applicants, but it may provide incentives for applicants to over-subscribe to services and tie-up scarce RHC funding in commitments that will not be fully utilized.[6]

Note the Commission has previously directed USAC to change RHCD administrative processes in cases where USAC failed to sufficiently accommodate program rules and requirements. This occurred in 1999 when the Commission expressly directed USAC to allow RHC applicants to add

[6] For example, using the illustration above, an HCP might seek a contract to provide 12 months of Service #2 (the more costly service), but seek to invoice for less costly Service #1 for an indefinite period until Service #2 is installed and available. This is similar to the illustration where $4,000 of support was committed but never utilized, but avoids the funding gap problem for applicants.

new consortia members to an existing contract by submitting a new Form 465.[7] More recently, in 2014, the Commission overruled USAC after it had refused to process mid-year service upgrades pursuant to approved evergreen contracts.[8] We believe the current situation resembles these earlier cases where RHCD administrative processes conflict with the letter and spirit of RHC program rules.

Going forward, there are a variety of ways RHCD might address this problem. For example, RHCD could allow applicants to shift funding between chronologically adjacent funding commitments. For example, using the illustration above, the total combined initial commitment amount was $18K, while actual funding needed was only $16K. RHCD could allow a shift of funds from the Service #2 FCL to the Service #1 FCL. Importantly, *such an adjustment would not disturb prior* pro-rata *cap calculations.* Pro rata *reductions would still be applied to the adjusted FCL amounts and would still net (in the example above) and additional $2K to USAC to reduce the contribution factor* (or perhaps to use as RHC rollover funds in the event FCC permits this in future years). Alternatively, RHCD could estimate the amount of RHC funds needed each year to facilitate adjustments to adjacent FCLs (similar to reserving funding for pending appeals), and then utilize these reserves to avoid these unfair and unreasonable gaps in funding. These are just two suggestions. We would welcome further discussion with RHCD to address this important issue.

Sincerely,

Jeffrey A. Mitchell
Counsel for General Communication, Inc.

cc: Radhika Karmarkar, Esq., FCC
Johnnay Schreiber, Esq., USAC
Chris Nierman, Esq. GCI

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[7] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Sixth Order on Reconsideration in CC Docket No. 97-21 and Fifteenth Order on Reconsideration in CC Docket No. 96-45, 14 FCC Rcd 18756, ¶ 59 (1999) ("We understand that USAC might prefer that rural health care providers list all possible participants in their initial applications, thus, permitting USAC to evaluate all participants at once. We, however, are not persuaded that the administrative difficulties are so great as to warrant restricting joint purchasing and network-sharing arrangements.").

[8] *See* Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, DA 14-1526, 6-7 (2014) (reversing RHCD funding denials and granting separate appeals by Yukon-Kushkokwin Health Corporation and Norton Sound Health Corporation who each sought to upgrade services mid-year pursuant to RHCD-approved evergreen contracts containing provisions allowing such upgrades).